



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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Governor's Office of Planning & Research

October 22, 2020

**Oct 22 2020**

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## STATE CLEARINGHOUSE

**Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Amherst Residential Development, SCH #2020100017, Los Angeles County**

Dear Ms. Bowcock:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Amherst Residential Development (Project).

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's 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 & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" (see Fish & Game Code, § 2050) of any species protected under the California Endangered Species Act (CESA; Fish & Game Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 et seq.), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Candice Bowcock  
City of La Verne  
October 22, 2020  
Page 2 of 9

**Project Location:** The Project site is located at 2820 Amherst Street at the eastern limits of the City of La Verne, Los Angeles County, California. The Project site is composed of two parcels, Assessor Parcel Number 8666-021-902 and 866-021-904. The Project site is approximately 0.25 mile south of State Route 210 (SR 210) and 0.5 mile north of Foothill Boulevard. Regional access to the site is available from the south via Interstate 10 (I-10) Freeway and from the east and west via the SR 210. Local access is available at the Fruit Avenue on- and off-ramps, approximately one mile northwest of the site. Direct access is provided to the Project site via Amherst Street and Williams Avenue. The Project is bound by a mobile home park (multi-family residential) to the south and west, single-family residences to the north and east, and the City of La Verne (City)-owned and operated Amherst Groundwater Treatment Plan/Reservoir to the northeast.

**Project Description/Objectives:** The Project would develop up to 42 single-family dwelling units and on-site recreational amenities, on a 5.7-acre site, for an overall density of 7.8 units per acre under the Amherst Specific Plan. Park space would be accessible to residents within the development, as well as to the public. Access to the adjacent Amherst Groundwater Treatment facility through the Project site would remain after build-out of the Amherst Specific Plan. The Project would develop a total of 42 two-story residences.

Common open space would be composed of parkways, community entry features, and other landscaped areas within the community. Public open space within the Project would be provided in the form of a 0.25-acre pocket park to be dedicated to the City and located adjacent to the Project entry. Proposed water system improvements within the Amherst Specific Plan area include eight-inch water distribution lines that provide potable water service to dwelling units within the Project site. These new facilities would connect to an existing domestic water line located within the Amherst Street right-of-way.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations 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.

### Specific Comments

- 1) Lake and Streambed Alteration Agreement (LSA). The Initial Study states that "a new storm drain pipe is proposed to be constructed from the southwest corner of the Project; through the mobile home park adjacent to the Project site, to an existing on-site catch basin which connects via a storm drain pipe directly to the Los Angeles County Flood Control District's (LACFCD) Live Oak Wash flood control channel." CDFW is concerned that this new drainpipe may have potential for changes in water quality, quantity, and turbidity in the Live Oak Wash flood control channel. The Project may substantially adversely affect the existing stream pattern of Live Oak Wash flood control channel through discharge activities to a stream, which absent specific mitigation, could result in substantial erosion or siltation on site or off site of the Project.
  - a) As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow; or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; or use material from a streambed. For any such activities, the Project

Candice Bowcock  
City of La Verne  
October 22, 2020  
Page 3 of 9

- applicant (or “entity”) must provide written notification to CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether an LSA Agreement (Agreement) with the applicant is required prior to conducting the proposed activities. CDFW’s issuance of an Agreement for a Project that is subject to CEQA will require related environmental compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document prepared by the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the DEIR should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the [LSA](#) (CDFWa, 2020).
- b) The Project area is within 300 feet to the Live Oak Wash flood control channel; therefore, CDFW recommends an investigation of the site for possible surface drainages to the surrounding areas that may feed into this channel. A preliminary jurisdictional delineation of the streams and any associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the U. S. Fish and Wildlife Service (USFWS) wetland definition adopted by the CDFW (Cowardin *et al.* 1970). Some wetland and riparian habitats subject to CDFW’s authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers’ section 404 permit and Regional Water Quality Control Board section 401 Certification.
- c) The Initial Study states, “Construction activities associated with the project would have the potential to generate soil erosion and to increase sediment and other pollutant loads in stormwater runoff. Further, operation of the proposed project would increase impervious surface area on the project site, which can result in increased runoff and degraded water quality.” CDFW recommends a hydrological study to identify any change in the percentage to the current water budget for the Live Oak Wash channel pre, during, and post construction. The hydrological study should also determine if an increase in impervious surfaces will adversely impact locations currently utilizing water that drains off site or from groundwater recharge on site. Finally, Project-related changes in runoff and sedimentation in upstream and downstream drainage patterns should be included and evaluated in the hydrological study.
- d) As part of the LSA Notification process, CDFW requests the 200, 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions. CDFW recommends the DEIR evaluate the results and address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts.
- 2) Nesting Birds. As stated in the Initial Study, “The Project site currently contains nursery plants and ornamental shade trees, which would be removed as part of the Project.” These trees may provide potential nesting habitat and Project activities may impact nesting birds. CDFW recommends that measures be taken to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as

Candice Bowcock  
City of La Verne  
October 22, 2020  
Page 4 of 9

listed under the Federal MBTA). Proposed Project activities including (but not limited to) staging and disturbances to vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 15 through August 31 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300-feet of the disturbance area (within 500-feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

It should be noted that the temporary halt of Project activities within nesting buffers during nesting season does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. Additional mitigation would be necessary to compensate for the removal of nesting habitat within the Project site based on acreage of impact and vegetation composition. CDFW should be consulted to determine proper mitigation for impacts to occupied habitat depending on the status of the bird species. Mitigation ratios would increase with the occurrence a California Species of Special Concern and would further increase with the occurrence of a CESA-listed species.

- 3) Landscaping. The Initial Study states, “There are three types of open spaces within the Project area: private yard space, common area landscape, and public open space. All Project landscaping will be required to meet the City’s Water Efficient Landscape Ordinance (La Verne Municipal Code 18.118).” CDFW recommends using native, locally appropriate plant species for landscaping on the Project site. CDFW recommends invasive/exotic plants, including pepper trees (*Schinus* genus) and fountain grasses (*Pennisetum* genus), be restricted from use in landscape plans for this Project. The California Invasive Plant Council provides a [list of invasive/exotic plants](#) (Cal-IPC, 2020) that should be avoided as well as suggestions for better landscape plants.
- 4) Tree Replacement. The Initial Study states in Mitigation Measure BIO-1, “Removal of the protected tree will be mitigated by the onsite replacement of the caliper 42-inch tree by at least four trees with 60-inch minimum boxes, or as further determined by the City of La Verne’s Design Review Committee.”
  - a) CDFW is concerned that an investigation to identify the potential for tree pests was not indicated in the Initial Study. Project activities have the potential to result in the spread of tree insect pests and disease into areas not currently exposed to these stressors. This could result in expediting the loss of oaks, alders, sycamore, and other trees in California which support a high biological diversity including special status species. To reduce impacts to less than significant the final environmental document should describe an infectious tree disease management plan and how it will be implemented in order to avoid significant impacts under CEQA. All trees identified for removal resulting from the Project should be inspected for contagious tree diseases including but not limited to: [thousand canker fungus](#) (*Geosmithia morbida*), [Polyphagous Shot Hole Borer](#) (*Euwallacea* spp.), and [goldspotted oak borer](#) (*Agrilus auroguttatus*) (TCD 2020; UCANR 2020; UCIPM 2013). To avoid the spread of infectious tree diseases, diseased trees should not be transported from the

Candice Bowcock  
City of La Verne  
October 22, 2020  
Page 5 of 9

Project site without first being treated using best available management practices relevant for each tree disease observed.

- b) In addition, to compensate for any loss of trees, CDFW recommends replacing all non-native trees removed as a result of the proposed work activities at least a 1:1 ratio with native trees. CDFW recommends replacing native trees at least a 3:1 ratio with a combination of native trees and/or appropriate understory and lower canopy plantings. CDFW recommends that any loss of oaks should be replanted at a minimum 10:1 ratio. Replacement oaks should come from nursery stock grown from locally sourced acorns, or from acorns gathered locally, preferably from the same watershed in which they were planted.

### General Comments

- 1) Biological Baseline Assessment and Impact Analysis. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species, and sensitive habitats. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts, as referred in General Comment 3 and 4. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. CDFW also considers impacts to Species of Special Concern a significant direct and cumulative adverse effect without implementing appropriate avoid and/or mitigation measures. The DEIR should include the following information:
  - a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity. CDFW considers these communities as threatened habitats having both regional and local significance. Plant communities, alliances, and associations with a state-wide [ranking](#) (CDFWb, 2020) of S1, S2, S3 and S4 should be considered sensitive and declining at the local and regional level.
  - b) A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities](#) (CDFW, 2018);
  - c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. *The Manual of California Vegetation*, second edition, should also be used to inform this mapping and assessment (Sawyer, 2008). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
  - d) A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the



Candice Bowcock  
City of La Verne  
October 22, 2020  
Page 6 of 9

Project. CDFW's California Natural Diversity Data Base (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that [CNDDDB Field Survey Forms](#) (CDFWc, 2020) be completed and submitted to CNDDDB to document survey results.

- e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including California Species of Special Concern and California Fully Protected Species (Fish & Game Code, §§ 3511, 4700, 5050 and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the USFWS; and,
  - f) A recent, wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.
- 2) Project Description and Alternatives. To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:
- a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,
  - b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.
- 3) CESA. CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or State-listed rare plant species that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish & Game Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a

Candice Bowcock  
City of La Verne  
October 22, 2020  
Page 7 of 9

mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

- 4) Biological Direct, Indirect, and Cumulative Impacts. To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR:
  - a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage. The latter subject should address Project-related changes on drainage patterns and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and, post-Project fate of runoff from the Project site. The discussion should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;
  - b) A discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish & Game Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
  - c) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR; and,
  - d) A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- 5) Compensatory Mitigation. The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code section 65967, the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

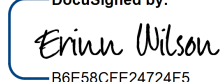
Candice Bowcock  
City of La Verne  
October 22, 2020  
Page 8 of 9

- 6) Long-term Management of Mitigation Lands. For proposed preservation and/or restoration, the DEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be set aside to provide for long-term management of mitigation lands.
- 7) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation are the processes of moving an individual from the Project site and permanently moving it to a new location. CDFW generally does not support the use of, translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.
- 8) Moving out of Harm's Way. To avoid direct mortality to wildlife that may be on site, CDFW recommends that a qualified biological monitor approved by CDFW be on site prior to and during ground activities to move out of harm's way any special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project-related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the DEIR clearly identify that the designated entity shall obtain all appropriate state and federal permits.

## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Felicia Silva, Environmental Scientist, at (562) 430-0098 or by email at [Felicia.Silva@wildlife.ca.gov](mailto:Felicia.Silva@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Candice Bowcock  
City of La Verne  
October 22, 2020  
Page 9 of 9

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