



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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San Diego, CA 92107
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

April 28, 2021

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Mr. Oscar Romero
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
ORomero@chulavistaca.gov

STATE CLEARINGHOUSE

Subject: Sunbow Sectional Planning Area Plan Amendment for the Sunbow II, Phase 3 Project (Project) Draft Environmental Impact Report (DEIR), SCH #2020110148

Dear Mr. Romero:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of Chula Vista (City) for the 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW administers the Natural Community Conservation Planning (NCCP) program (Fish and Game Code 2800, *et seq.*). On November 2003, CDFW issued a permit for the City's Multiple Species Conservation Program (MSCP) Subarea Plan (SAP). The City's SAP is the mechanism by which the City has obligated to assemble a preserve consistent with the goals of the MSCP Subregional Plan.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Chula Vista

Objective: The project encompasses approximately 135.7 acres (project site) that includes a 67.5-acre development area comprised of 44.2 acres of residential uses, a 0.9-acre Community

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.

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Purpose Facility site, 5.9 acres of public streets and 16.5 acres of manufactured slopes/basins. Approximately 4.3 acres of conserved Poggi Creek Easement area, 0.3 acre of conserved wetland resource area, and 63.6 acres of adjacent MSCP Preserve area are also within the project site. The proposed project includes a Chula Vista General Plan Amendment, Sunbow General Development Plan (GDP) Amendment, Sunbow II Sectional Planning Area (SPA) Plan Amendment, a rezone, and a Tentative Map. The proposed project also includes a Chula Vista MSCP Boundary Adjustment. The purpose is to implement minor adjustments to the development limits and the adjacent MSCP Preserve areas. The adjustments will result in a 0.09-acre increase to MSCP Preserve Area and a MSCP Minor Amendment to address off-site grading adjacent to the southwestern boundary of the development area.

Location: The project site (Assessor's Parcel Numbers 644-011-06-00 and 644-020-11-00) is located south of Olympic Parkway (previously East Orange Avenue) and east of Brandywine in the City of Chula Vista. The project site is situated within Sections 17 and 18, Township 18 South, Range 1 West of the U.S. Geological Survey Imperial Beach, California Quadrangle.

Biological Setting: The project site is bordered by the Otay Landfill to the south and southeast, and undeveloped land approved for industrial and residential land uses is located to the east. Residential Medium High Density land uses are located to the west of the project site, across Brandywine Avenue. The existing Olympic Parkway forms the northern boundary of the project site. The project site consists of the following vegetation types: Diegan coastal sage scrub (37.08 acres), native grassland (24.09 acres), non-native grassland (64.19 acres), and non-native vegetation (0.53 acre), southern willow scrub (2.06 acres), mule fat scrub (0.03 acre), and coastal and valley freshwater marsh (7.66 acres).

Twelve sensitive floral species were identified within the project site: Otay tarplant (*Deinandra conjugens*), Orcutt's birds-beak (*Dicranostegia orcuttiana*), decumbent goldenbush (*Isocoma menziesii* var. *decumbens*), coast barrel cactus (*Ferocactus viridescens*), San Diego bursage (*Ambrosia chenopodiifolia*), San Diego marsh-elder (*Iva hayesiana*), small-flowered bindweed (*Convolvulus arvensis*), Palmer's sagewort (*Artemisia palmeri*), San Diego County needlegrass (*Stipa diegoensis*), San Diego viguiera (*Bahiopsis laciniata*), southwestern spiny rush (*Juncus acutus* ssp. *leopoldii*), and ashy spike-moss (*Selaginella cinerascens*).

Ten sensitive fauna species were identified within the project site: least Bell's vireo (*Vireo bellii pusillus*); coastal California gnatcatcher (*Polioptila californica californica*); yellow-breasted chat (*Icteria virens*); yellow warbler (*Dendroica petechia*); Cooper's hawk (*Accipiter cooperii*); Nuttall's woodpecker (*Picoides nuttallii*); northern harrier (*Circus cyaneus*); white-tailed kite (*Elanus leucurus*); orange-throated whiptail (*Aspidoscelis hyperythra*); and two-striped garter snake (*Thamnophis hammondi*).

Due to the abundance of grassland habitat, western burrowing owl (*Athene cunicularia*) has a potential to occur on site but was not detected.

Timeframe: Approximately 7 years, beginning May 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

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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

Comment #1: Clarification of Conservation Easement Areas in relation to Mitigation Plan

Section: 4.4.1.3 Open Space, page 4-6 of the DEIR

Issue: The DEIR states that the Project site contains 19.2 acres of conservation easement (CE) areas: 9.7 acres within a recorded CE with the United States Army Corps of Engineers (USACE) as Grantee, 5.6 acres of proposed CE that will be recorded in the future, and 3.9 acres of proposed Poggi Creek Conservation Easement that will be recorded in the future. Of these 19.2 acres, 12.4 acres are within the proposed Chula Vista MSCP Boundary. Clarification is needed regarding if any, or part of, the CE areas are proposed to be used as mitigation for the Project impacts.

Specific impacts: Without very clear evidence that the conservation easement areas described in the DEIR are independent of the mitigation requirements for Project impacts, it is difficult to determine if the Project mitigation is sufficient.

Evidence impact would be significant: Conservation easement lands used to mitigate impacts for previous/completed projects should not serve to mitigate impacts for the proposed Project. CDFW is not aware of unused credits that had been recognized as available for future projects, and this approach is not inconsistent with banking practices.

Recommendation #1: CDFW recommends that land set aside as mitigation for the current Project be independent of lands set aside for previous projects. CDFW further recommends that both the recorded and future conservation easement areas be described using clear language and figures which distinguishes conservation achieved by past projects and the current Project, and that this information be included in the City's SAP annual report.

Comment #2: Impact Analysis Shortcoming for Burrowing Owl

Issue: The DEIR states that there is high suitability habitat for burrowing owl on site. The DEIR and Biological Impact Analysis Report (BIAR) state that no burrowing owl nor sign of burrowing owl was detected on site. However, the DEIR does not include provisions for continued burrowing owl monitoring prior to or during construction activities or recognize that following the initial grading the site could become attractive to owls during the construction period.

Specific impact: If burrowing owls subsequently occupy the site, Project activities may result in direct and/or indirect burrowing owl mortality or injury.

Why impact would occur: There is suitable habitat for burrowing owl on site, and once initial grading begins and large tracts become devoid of vegetation, the site may become even more attractive to burrowing owls. Nest and roost burrows of the burrowing owl are most commonly dug by ground squirrels (*Otospermophilus beecheyi*), but they have also been known to use a variety of other species dens or holes, including coyote (*Canis latrans*) (Gervais et al 2008). These associated species having either been observed or are expected to occur on site. If subsequently present on site, impacts to burrowing owl could result from vegetation clearing and other ground

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disturbing activities. Project disturbance activities may result in crushing or filling of active owl burrows, causing the death or injury of adults, eggs, and young.

Evidence impact would be significant: Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86 and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." Without appropriate take avoidance surveys prior to Project operations including, but not limited to, ground and vegetation disturbing activities, adverse impacts to burrowing owl may occur because species presence/absence had not been verified during ongoing construction monitoring.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: To reduce potential impacts to burrowing owl, CDFW recommends that the Project perform pre-construction inspection of potential habitat, and that minimum twice weekly inspections be performed while rough grading is ongoing. All survey efforts should be conducted prior to any project activities that could result in habitat disturbance to soil, vegetation or other sheltering habitat for burrowing owl. If any owls or sign of owls is detected, the Wildlife Agencies (jointly, CDFW and USFWS) shall be contacted; efforts must be made to determine the breeding status of the species on site, and whether it is safe at that point to exclude owls from occupied burrows. Active or passive relocation methods shall only be employed with concurrence by CDFW and USFWS. In California, the burrowing owl breeding season extends from 1 February to 31 August with some variances by geographic location and climatic conditions.

Editorial Comments and Suggestions

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 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.

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Questions regarding this letter or further coordination should be directed to Melanie Burlaza, Environmental Scientist, at Melanie.Burlaza@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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David A. Mayer
Environmental Program Manager I
South Coast Region

Attachments: Attachment A: Recommended Mitigation Measures

ec: CDFW

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REFERENCES

California Fish and Game Code §1600, §2080, §2800, §3503

California Natural Diversity Database 2021. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Available from <https://apps.wildlife.ca.gov/bios/>

California Office of Planning and Research. 2019 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, CEQA Guidelines Appendix G.

Gervais, J. A., D. K. Rosenberg, and L.A. Comrack. 2008. Species accounts: Burrowing Owl. *in* W.D. Shuford and T. Gardali, editors. California Bird Species of Special Concern: a ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and CDFW.

California Department of Fish and Wildlife. 2012. *Staff Report on Burrowing Owl Mitigation*. Sacramento, CA, USA.

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Attachment A: Recommendations and Mitigation Measures

Biological Resources			
	Recommendations and Mitigation Measures	Timing	Responsible Party
Recommendation #1:	<p>CDFW recommends that any proposed land set aside for mitigation purposes be independent of lands set aside for previous projects. Both the recorded and future conservation easement areas described within the DEIR shall not be included as mitigation credit nor count towards the Boundary Line Adjustment requirements. The final EIR should include clear language and figures demonstrating that these conservation easement areas are independent of Project mitigation requirements.</p>	<p>Prior to Construction</p>	<p>City of Chula Vista</p>
Mitigation Measure #1:	<p>Mitigation Measure #1: To reduce potential impacts to burrowing owl, CDFW recommends that the Project perform pre-construction inspection of potential habitat, and that minimum twice weekly inspections be performed while rough grading is ongoing. All survey efforts should be conducted prior to any project activities that could result in habitat disturbance to soil, vegetation or other sheltering habitat for burrowing owl. If any owls or sign of owls is detected, the Wildlife Agencies (jointly, CDFW and USFWS) shall be contacted; efforts must be made to determine the breeding status of the species on site, and whether it is safe at that point to exclude owls from occupied burrows. Active or passive relocation methods shall only be employed with concurrence by CDFW and USFWS.</p>	<p>Prior to Construction</p>	<p>City of Chula Vista</p>