



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



Governor’s Office of Planning & Research

February 8, 2021

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STATE CLEARINGHOUSE

Anthony De Luca
 County of San Bernardino
 Land Use Services Department
 385 N. Arrowhead Ave., First Floor
 San Bernardino, CA, 92415

Subject: Cedar Avenue Truck Terminal
 Mitigated Negative Declaration
 State Clearinghouse No. 2021010105

Dear Mr. De Luca:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of San Bernardino for the Cedar Avenue Truck Terminal Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding the 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.

PROJECT DESCRIPTION SUMMARY

The Project is proposing the development of a truck terminal facility in the unincorporated community of Bloomington, California. The truck terminal will comprise of a 2,400 square-foot building for office use and storage, a 250 square-foot guard shack, and a 4,800

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.

square-foot maintenance shop with four repair bays on approximately 8.95 acres. The Project will also include parking for 260 trucks, 14 vehicles, and 1 handicap accessible space. A stormwater retention basin would also be constructed in the southernmost portion of the Project site.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Bernardino County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

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.

Burrowing Owls

The MND states that the Project site is located within the "Biological Resource Overlay" of the Countywide Plan, and has "potentially suitable soils and plant cover" to support burrowing owl. In addition, fossorial mammal burrows, including California ground squirrel burrows, were identified onsite. CDFW appreciates the inclusion of mitigation measure BIO-1, requiring a focused burrow survey during the breeding season. However, CDFW is concerned that San Bernardino County determined the level of impacts the Project would have on burrowing owl without conducting a direct impact analysis of their presence and use of the site. In addition, mitigation measure BIO-1 does not address the loss of habitat nor does it include appropriate mitigation if a burrowing owl were to occur onsite. As such, CDFW disagrees that mitigation measure BIO-1 would be sufficient to reduce potential impacts to a less than significant level. CDFW recommends the following changes to mitigation measure BIO-1 in the MND prior to adoption:

Mitigation Measure BIO-1:

Prior to the initiation of construction, the Applicant shall implement a focused burrow survey during the breeding season (approximately February 15 through August 31) followed by a burrowing owl breeding bird surveys and an impact analysis, should burrowing owl be discovered using the site, as appropriate. The surveys should be conducted following the guidelines of the CDFW 2012 Staff Report. "Construction" includes selection of staging areas, demolition, tree, trash and debris removal, placement of equipment and machinery on to the site preparatory to grading, and any other project-related activity that increases noise and human activity on the project site beyond existing levels. Emergency measures are exempt from this definition. Methodology for surveys, impact analysis, and reporting shall follow the recommendations and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report), as described below.

- **The Applicant shall designate a burrowing owl biologist (Designated Biologist) that is knowledgeable about burrowing owls, including its natural**

history, habitat requirements, seasonal movement, and range, to survey and monitor for burrowing owls prior to project activities.

- **Protocol surveys for burrowing owl 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 during daylight hours within the breeding season: 1) a minimum of one visit between February 15th to April 15th, 2) a minimum of three survey visits at least three weeks apart between April 15th to July 15th, with at least one visit after June 15th to August 31st.**
- **During nonbreeding season (September 1st to January 31st) no disturbance shall occur within 50 meters of occupied burrows. During breeding season (February 1st to August 31st) no disturbance shall occur within 300 meters of occupied burrows. All occupied burrows will have a visible marker placed near them to ensure that equipment and machinery do not collapse the burrows.**
- **If breeding season surveys confirm occupied burrowing owl habitat in areas subject to project activities, then the Applicant shall contact CDFW and conduct an impact assessment, in accordance with the Staff Report on Burrowing Owl Mitigation prior to commencing project activities, to assist in the development of avoidance, minimization, and mitigation measures. Occupied habitats impacted by the project shall 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 Designated Biologist 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, the Applicant shall prepare and implement a plan for avoidance or passive exclusion, in coordination with CDFW.**

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.)

The MND recognizes that there is suitable nesting habitat on and around the Project site for nesting birds, but limits the implementation of surveys to a defined term, which may not be effective in ensuring complete avoidance of nesting birds, as nesting periods can vary widely between species, locations, and from year-to-year. In addition, the measure allows for the removal of nests that are actively being constructed, which could prevent successful reproduction for the season. As such, CDFW disagrees that mitigation measure BIO-2 would be sufficient to reduce potential impacts to a less than significant level and suggests the following changes be made prior to adoption of the MND, to ensure effective avoidance and minimization of impacts to nesting birds:

Mitigation Measure BIO-2:

- **Applicant shall designate an avian biologist (qualified biologist) experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey protocol, nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, identifying nesting stages and success; establishing avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**
- ~~If start of construction occurs between February 1 and August 31, then a~~ **A** qualified biologist shall conduct a breeding bird surveys **at the appropriate time of day/night during the appropriate weather conditions**, no more than three days prior to the start of construction to determine if nesting is occurring. This survey can be conducted as part of the burrowing owl surveys. **Preconstruction surveys shall focus on direct and indirect evidence of nesting, including nest locations, nesting stages, and nest behavior. Surveys shall evaluate all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. The duration of the survey shall be dependent upon the size of the project site, density, and complexity of the habitat; and shall be sufficient to ensure complete and accurate data is collected.**
- If ~~active occupied~~ **active** occupied nests are found, they shall not be disturbed unless the qualified biologist verifies through non-invasive methods that ~~either (a) the adult birds have not begun egg-laying and incubation; or (b) the juveniles from the occupied nests are capable of independent survival~~ **and will not be impacted by the removal of the nest**. If the biologist is not able to verify ~~one of the above conditions~~, then no disturbance shall occur within a distance specified by the qualified biologist for each nest or nesting site. The qualified biologist will determine the appropriate distance in consultation with the ~~California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service~~. **The size and location of buffer zones shall be based on nesting bird species, species behavior, nesting stage, species sensitivity to disturbance, and the intensity and duration of the disturbance activity.**

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 San Bernardino County in identifying and mitigating Project impacts on biological resources. CDFW concludes that the MND did not provide adequate mitigation measures for burrowing owl and nesting birds. Due to deficiencies in mitigation measures BIO-1 and BIO-2, CDFW has revised both measures with appropriate techniques to reduce the impact on burrowing owl and nesting birds. CDFW recommends that prior to the adoption of the MND, mitigation measure BIO-1 and mitigation measure BIO-2 reflect the revisions provided.

Questions regarding this letter or further coordination should be directed to Julisa Portugal, Environmental Scientist at (909)260-1998 or Julisa.portugal@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

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County of San Bernardino
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ec: HCPB CEQA Program
Habitat Conservation Planning Branch
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Julisa Portugal, Environmental Scientist, CDFW Inland Deserts Region
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REFERENCES

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