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*GAVIN NEWSOM, Governor*  
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Governor's Office of Planning & Research

**Mar 16 2021**

March 15, 2021  
*Sent via email*

## STATE CLEARINGHOUSE

Ivan Flores  
Assistant Planner  
City of Redlands  
35 Cajon Street, Suite 20  
Redlands, CA 92373

Subject: Initial Study and Mitigated Negative Declaration  
Mountain View Industrial Project  
State Clearinghouse No. 2021020280

Dear Ivan Flores:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from City of Redlands (City) for the Mountain View Industrial Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup> 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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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 Redlands, San Bernardino County, California; Latitude 34.068342 N and -117.242010 W. The Project site is located at the northeastern corner of Mountain View Avenue and the west-bound off-ramp of Interstate 10 (I-10). The Project proposes the construction of warehouse buildings with office space, parking, a public trail, and associated site improvements on 22.5-acres.

## **COMMENTS AND RECOMMENDATIONS**

CDFW is concerned that no focused field surveys were conducted. Instead, based on literature review and reconnaissance surveys, the ISMND presumes absence/presence of special-status species. Nonetheless, the ISMND recognizes the potential for burrowing owl (*Athene cunicularia*), a species of special concern, and nesting birds to occur within the Project area. CDFW is concerned that the analysis completed may have been inadequate to form a complete inventory of special-status species within the Project area and to identify the level of impacts on those species identified as potentially present. Absent these details, and supporting documentation, it is unclear whether the Project's impacts have been adequately identified, disclosed, and mitigated. 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 the following mitigation measures prior to finalizing the ISMND.

### Burrowing Owl (*Athene cunicularia*)

CDFW appreciates the City's willingness to coordinate with CDFW and to adopt the recommendations made in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012), if burrowing owl is detected during pre-construction surveys. However, because no protocol surveys were undertaken to determine presence/absence and the extent of impacts to burrowing owl, CDFW cannot determine if the ISMND has adequately disclosed and mitigated impacts, including with the

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incorporation of Mitigation Measure (MM) BIO-1: Burrowing Owl Pre-construction Clearance Survey. CDFW recommends that a habitat assessment be conducted prior to the start of Project activities as outlined in Appendix C of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). Please note that habitat assessments dated more than one year prior to the construction date are considered outdated and should be updated.

If the habitat assessment determines suitable habitat for burrowing owl, protocol surveys should be conducted prior to commencement of Project activities. Surveys should be consistent with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If burrowing owls are identified on the site, the Applicant should contact CDFW and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) prior to commencing Project activities, to assist in the development of avoidance, minimization, and mitigation measures. Depending on the level of impacts, CDFW would likely recommend permanent conservation, enhancement, and management of existing, occupied burrowing owl habitat and measures to minimize impacts to burrowing owls on the Project site. Considering all the above, CDFW offers the following revisions to MM BIO-1 (edits are in ~~strike through~~ and **bold**):

BIO-1 Burrowing Owl Pre-construction Clearance Survey

**Prior to grading or any other ground-disturbing activity, a qualified biologist shall conduct a habitat assessment for burrowing owls to determine if suitable burrowing owl habitat is present in and adjacent to the Project site. Surveys shall be conducted consistent with the procedures outlined in the “California Department of Fish and Wildlife 2012 Staff Report on Burrowing Owl Mitigation.”**

**If there is suitable habitat for burrowing owl, then focused breeding season surveys as described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012) shall be conducted by a qualified biologist. If presence of burrowing owl is confirmed, the applicant shall contact California Department of Fish and Wildlife (CDFW) and conduct an impact assessment in accordance with 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.**

A qualified wildlife biologist shall conduct a pre-construction survey of proposed impact areas to confirm presence/absence of burrowing owl (BUOW) individuals no more than ~~30~~ **14** days prior to construction. The survey methodology will be consistent with the methods outlined in the California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation (2012). If no active breeding or wintering owls are identified, no further mitigation is required. If BUOW is detected onsite, the following mitigation measures ~~are recommended to~~ **shall** be implemented in accordance with the CDFW Staff Report on Burrowing Owl Mitigation (2012):

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- A qualified wildlife biologist shall be onsite during initial ground-disturbing activities in potential BUOW habitat **identified through the habitat assessment.**
- No ground-disturbing activities shall be permitted within a buffer no less than 200 meters (656 feet) from an active burrow, depending on the level of disturbance, unless otherwise authorized by CDFW **the qualified biologist determines a reduced buffer would not adversely affect the burrowing owl(s).**
- Occupied burrows ~~should~~ **shall** not be disturbed during the nesting season (February 1 to August 31), ~~unless a qualified biologist verifies through noninvasive methods that either: (1) the birds have not begun egg-laying and incubation; or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival.~~
- During the nonbreeding (winter) season (September 1 to January 31), ground-disturbing work can proceed near active burrows as long as the work occurs no closer than 50 meters (165 feet) from the burrow, depending on **whether** the level of disturbance **is low**, and ~~the~~ **if site the active burrow** is not directly affected by the project activity. A smaller/**larger** buffer may be established ~~in consultation with CDFW~~ **by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls.** If active winter burrows are found that would be directly affected by ground-disturbing activities, owls ~~can~~ **shall** be excluded from winter burrows according to recommendations made in the Staff Report on Burrowing Owl Mitigation (2012). **Additionally, 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 CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW review and approval prior to the commencement of disturbance activities onsite.**
- BUOWs ~~should~~ **shall** not be excluded from burrows ~~unless or~~ until a Burrowing Owl Exclusion Plan is developed based on the recommendations made in **Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the CDFW Staff Report on Burrowing Owl Mitigation (2012).** **The Burrowing Owl Exclusion Plan shall be submitted to CDFW for review and approval prior to the commencement of disturbance activities onsite.**
- **Prior to passive relocation, C**ompensatory mitigation **at a ratio of 2:1** for lost breeding and/or wintering habitat ~~should~~ **shall** be implemented on or off-site **including permanent conservation and management of burrowing owl habitat through the recordation of a conservation easement, funding of a non-wasting endowment, and** implementation of a Mitigation Land Management Plan, based on the CDFW Staff Report on Burrowing Owl Mitigation (CDFW 2012) **and CDFW** guidance. Mitigation lands ~~should~~ **shall** be **identified through coordination with CDFW and** on, adjacent, or proximate to the impact site where possible and where habitat is ~~sufficient~~ **suitable** to support BUOW ~~present.~~

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- **When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. 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.**

### Nesting Birds

Pre-construction nesting bird surveys should be conducted *3 days prior to commencement of project activities* in all suitable areas including trees, shrubs, bare ground, burrows, and cavities, at the appropriate time of day/night, during appropriate weather conditions to verify the absence of active nests. Pre-construction surveys should focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). CDFW offers the following revisions to MM BIO-2 (edits are in ~~strikethrough~~ and **bold**):

#### BIO-2 Pre-construction Nesting Bird Surveys

Migratory or other common nesting birds, ~~while not designated as special-status species,~~ are protected by the California Fish and Game Code (CFGC) **sections 3503 and 3503.5**, and ~~the~~ **federal** Migratory Bird Treaty Act (MBTA) and may nest in ornamental trees, **grass, bare ground, burrows/cavities, man-made structures** and shrubs on site. Construction of the project thus has the potential to directly (by destroying a nest) or indirectly (construction noise, dust, and other human disturbances that may cause a nest to fail) impact nesting birds protected under the CFGC and MBTA. The following measure is recommended to maintain compliance with the CFGC Section 3503 **and 3503.5** and the MBTA with respect to nesting birds:

- ~~If vegetation trimming or removal~~ **project** activities take place during the bird nesting season (generally February 1 through August 31, but variable based on seasonal and annual climatic conditions), **as determined by a qualified biologist**, nesting bird surveys ~~are recommended to~~ **shall** be performed by a qualified biologist within ~~seven~~ **three** days prior to ~~such~~ **project** activities to determine the presence/absence, location, and status of any active nests on site ~~or~~ **and** within 100 feet of the site.
- If nesting birds are found on site, a construction buffer of appropriate size (as determined by the qualified biologist) ~~should~~ **shall** be implemented around the active nests and demarcated with fencing or flagging. **If ground/burrow nesting birds are identified, demarcation materials that will not provide perching habitat for predatory bird species shall be used.** Nests ~~should~~ **shall** be monitored at a minimum of once per week by the qualified biologist until it has been determined that the nest is no longer being used by either the young or adults. No ground disturbance ~~should~~ **shall** occur within this buffer until the

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qualified biologist confirms that the breeding/nesting is complete, and all the young have fledged **and are capable of surviving independently of the nest.** If project activities must occur within the buffer, they ~~should~~ **shall** be conducted ~~at the~~ **a distance determined** ~~discretion of~~ **by** the qualified biologist **that will prevent project-related disturbances.**

- If no nesting birds are observed during pre-construction surveys, no further actions would be necessary.

### **Lake and Streambed Alteration Program**

The Project proposes that stormwater that discharges from the proposed on-site stormwater drainage system would flow off-site to the Mission Zanja flood control channel and eventually to the Santa Ana River. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

### **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

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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). 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](mailto: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 Mountain View Industrial Project (SCH No. 2021020280) and hopes our comments assist the City of Redlands 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 805-712-0346 or at [Cindy.Castaneda@wildlife.ca.gov](mailto:Cindy.Castaneda@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
 for  
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## **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](http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)