



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

April 21, 2021

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Tabbe van der Zwaag
City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA, 91729

STATE CLEARINGHOUSE

Subject: East Avenue 17 Project
Mitigated Negative Declaration
2021030567

Dear Tabbe van der Zwaag:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration (MND) from the City of Rancho Cucamonga (City; Lead Agency) for the East Avenue 17 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.

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

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.

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 is proposing to develop a 21-lot residential subdivision, to include 17 single-family homes and four open space parcels on an approximately 10 acres.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist City 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.

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-1, but requests revisions to address species that may nest outside of the specified nesting season and offers additional, detailed language on survey methods, monitoring, and minimization. CDFW recommends BIO-1 be revised as follows:

BIO-1 – Applicant shall designate a biologist (Project biologist) experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; 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. ~~If construction occurs between February 1st and August 31st, †~~ The Project biologist shall conduct a pre-construction clearance survey for nesting birds **at the appropriate time of day/night, during appropriate weather conditions,** ~~The survey shall be conducted~~ within 3 days of the start of any vegetation removal or ground disturbing activities. The purpose of the survey is to identify any nesting birds that may be present and to ensure that no nesting birds will be disturbed during Project vegetation removal or ground disturbing activities. **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.** The Project biologist shall document negative survey results with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is encountered during the pre-construction clearance survey, construction activities shall be excluded from a defined “no-disturbance buffer area.” The size and configuration of the no-disturbance buffer area will be determined by the Project biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical conditions. The Project biologist will evaluate these factors in context when developing the no-disturbance buffer area. Limits of the no-disturbance buffer area shall be established in the field with flagging, fencing, or other appropriate barriers. Construction personnel shall be instructed on the sensitivity of nest areas and to avoid the designated no-disturbance buffer area. The Project biologist shall be present to delineate the boundaries of the buffer area and to monitor any active nest to ensure that nesting behavior is not adversely affected by construction activities. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the no-disturbance buffer area may proceed. At the conclusion of monitoring activities, the Project Biological Monitor shall prepare a final report documenting monitoring activities, monitoring results, and any on-site mitigation actions.

San Bernardino Kangaroo Rat

The MND identifies that 1.2 acres of Riversidean Alluvial Fan Sage Scrub (RAFSS) habitat occurs along the easterly Project site boundary. RAFSS is the habitat predominantly utilized by the San Bernardino Kangaroo Rat (SBKR), a federally endangered and state candidate species. The MND states, “an assessment of the existing 1.21 acres of RAFSS habit in the easterly portion of the Project site has been

completed... [and] determined that the plant cover from non-native grasses in this 1.21-acre area was too dense to support San Bernardino Kangaroo Rat.” It concludes that the Project site does not provide suitable habitat for SBKR and no further studies are recommended.

CDFW disagrees with the presumption that SBKR could not occur onsite due to non-native grass cover. While the habitat is mature, there are two known occurrences of SBKR within half a mile of the Project site (CNDDDB, 2021). CDFW is concerned that potential impacts to SBKR are not identified or discussed within the MND. Appropriate analysis would include conducting SBKR trapping sessions within the RAFSS habitat during appropriate periods. Were SBKR to be present onsite, appropriate authorization (e.g., a CESA incidental take permit) should be obtained prior to the initiation of Project activities. Therefore, CDFW recommends the City include the following mitigation measure in the MND.

BIO-2 – Within 12 months prior to the start of Project activities, Applicant shall conduct small mammal trapping for SBKR within the Project area. Results of trapping surveys shall be provided to CDFW. If SBKR are present, Applicant shall apply for an Incidental Take Permit with CDFW prior to conducting Project activities and shall mitigate for the loss of occupied habitat through the purchase of CDFW-approved mitigation bank credits at a level deemed appropriate by CDFW, and no less than a ratio of 2:1.

Bats

The MND states the Project site has “a low potential to support western mastiff bat (*Eumops perotis californicus*)” but does not provide further analysis of the potential direct, indirect, or cumulative impacts to the species. The MND also identifies that the northerly and southerly boundaries of the Project site are lined with eucalyptus windrows, almost entirely composed of eucalyptus (*Eucalyptus sp.*), that could provide roosting habitat for the western mastiff bat. CDFW strongly recommends the inclusion of the following mitigation measure before adopting the MND.

BIO-3 – No less than 60 days prior to initiating Project activities, the Project biologist shall conduct a bat roosting habitat suitability assessment of any vegetation that may be removed, altered, or indirectly impacted by the Project activities. Any locations with potential to support roosting bats shall be surveyed by the Project biologist using an appropriate combination of structure inspection, sampling, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate time of day/night to ensure detection of bats. The results of the pre-construction bat surveys shall be submitted to CDFW for review no less than 30 days prior to the initiation of Project activities.

If the presence of bats within the Project is confirmed, avoidance and minimization measures, including the designation of buffers based upon

what bat species are found, and phased removal of trees, shall be developed and submitted to CDFW for review and approval. If the site supports maternity roosts, Applicant shall avoid disturbing those areas during the breeding season and shall compensate for impacts and losses to maternity roosts and/or special-status bat habitat through a mitigation strategy approved by CDFW.

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 City in identifying and mitigating Project impacts on biological resources. The MND includes inadequate survey methods for nesting birds and did not include any survey methods or minimization measure for SBKR and bats, thus did not provide proper analysis that the Project would have less than significant impacts. As such, CDFW recommends the City 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.

Tabbe van der Zwaag
East Avenue 17 Project
April 21, 2021
Page 6 of 9

Sincerely,

DocuSigned by:

8091B1A9242F49C...

Scott Wilson
Environmental Program Manager

Attachment 1

ec: Marina Barton, Environmental Scientist, CDFW Inland Deserts Region
Marina.Barton@wildlife.ca.gov

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

HCPB CEQA Coordinator
Habitat Conservation Planning Branch

REFERENCES

California Natural Diversity Database (CNDDDB) Government [ds45]. 2021. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System.

ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1: Applicant shall designate a biologist (Project biologist) experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; 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. If construction occurs between February 1st and August 31st, the The Project biologist shall conduct a pre-construction clearance survey for nesting birds at the appropriate time of day/night, during appropriate weather conditions. The survey shall be conducted within 3 days of the start of any vegetation removal or ground disturbing activities. The</p>	<p>Before commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

purpose of the survey is to identify any nesting birds that may be present and to ensure that no nesting birds will be disturbed during Project vegetation removal or ground disturbing activities. **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.** The Project biologist shall document negative survey results with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is encountered during the pre-construction clearance survey, construction activities shall be excluded from a defined "no-disturbance buffer area." The size and configuration of the no-disturbance buffer area will be determined by the Project biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical conditions. The Project biologist will evaluate these factors in context when developing the no-disturbance buffer area. Limits of the no-disturbance buffer area shall be established in the field with flagging, fencing, or other appropriate barriers. Construction personnel shall be instructed on the sensitivity of nest areas and to avoid the designated no-disturbance buffer area. The Project biologist shall be present to delineate the boundaries of the buffer area and to monitor any active nest to ensure that nesting behavior is not adversely affected by construction activities. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the no-disturbance buffer area may proceed. At the conclusion of monitoring activities, the Project Biological Monitor shall prepare a final report documenting monitoring activities, monitoring results, and any on-site mitigation actions.

<p>BIO-2 –Within 12 months prior to the start of Project activities, Applicant shall conduct small mammal trapping for SBKR within the Project area. Results of trapping surveys shall be provided to CDFW. If SBKR are present, Applicant shall apply for an Incidental Take Permit with CDFW prior to conducting Project activities and shall mitigate for the loss of occupied habitat through the purchase of CDFW-approved mitigation bank credits at a level deemed appropriate by CDFW, and no less than a ratio of 2:1.</p>	<p>Before commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-3 – No less than 60 days prior to initiating Project activities, the Project biologist shall conduct a bat roosting habitat suitability assessment of any vegetation that may be removed, altered, or indirectly impacted by the Project activities. Any locations with potential to support roosting bats shall be surveyed by the Project biologist using an appropriate combination of structure inspection, sampling, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate time of day/night to ensure detection of bats. The results of the pre-construction bat surveys shall be submitted to CDFW for review no less than 30 days prior to the initiation of Project activities.</p> <p>If the presence of bats within the Project is confirmed, avoidance and minimization measures, including the designation of buffers based upon what bat species are found, and phased removal of trees, shall be developed and submitted to CDFW for review and approval. If the site supports maternity roosts, Applicant shall avoid disturbing those areas during the breeding season and shall compensate for impacts and losses to maternity roosts and/or special-status bat habitat through a mitigation strategy approved by CDFW.</p>	<p>Before commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>