



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

September 2, 2021
Sent via email

September 02 2021

STATE CLEARINGHOUSE

Brett Dawson
Riverside County Planning Department
Post Office Box 1147
Riverside, CA 92502
bdawson@rivco.org

Subject: Mitigated Negative Declaration
Harvill and Rider (PPT190039, CZ 200008, CEQ 190175)
State Clearinghouse No. 2021080035

Dear Mr. Dawson:

The California Department of Fish and Wildlife (CDFW) received the Mitigated Negative Declaration (MND) on August 3, 2021, from the County of Riverside (County) for the Harvill and Rider (PPT190039, CZ 200008, CEQ 190175) Project (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 is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

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.

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

Project Location

The proposed Project is generally located north of Rider Street, south of Cajalco Road, east of Harvill Avenue, and west of Interstate I-215 (I-215). Specifically, the site is bounded on the south by Rider Street, on the west by Harvill Avenue, on the east by the RCTC/Metrolink railway, and on the north by vacant land.

Project Description

The Project proposes to develop an approximately 15.07-gross acre site for the construction and operation of one approximately 334,922 square foot (SF) warehouse building with approximately 10,990 SF of 1st floor office, 7,850 SF of office mezzanine, 316,082 SF of warehouse, 41 dock doors, parking for automobiles and trucks, one water quality detention basin, and associated improvements. Additional site improvements include, vehicle drive aisles, screen walls, steel fencing and gates, trash enclosures, exterior ancillary lighting, signage, landscaping, patio, and utility improvements.

COMMENTS AND RECOMMENDATIONS

CDFW is concerned about the adequacy of the impact analysis and the mitigation measures proposed in the MND and the ability of the Project to mitigate the significant, or potentially significant, direct and indirect impacts to native habitats and species that rely on these habitats. Following review of MND, CDFW offers the comments and recommendations presented below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The comments and recommendations are also offered to enable the County to update the MND to adequately disclose impacts and measures for CDFW and the public to review and comment on the proposed Project with respect to the Project's compliance with Fish and Game Code sections 1602 and 3503, 3503.5, and 3513. CDFW recommends that each of these be addressed prior to finalization of the Mitigated Negative Declaration.

Lake and Streambed Alteration Program

CDFW's review of material submitted with the MND, specifically the Biological Technical Report (Section 4.10), and review of aerial photography, identified permanent impacts to 0.062 acres of fish and wildlife resources subject to Fish and Game Code section 1600 et seq. within the Project site. The Project proposes to mitigate for permanent impacts to fish and wildlife resources subject to Fish and Game Code section 1600 et seq. via the purchase of mitigation credits from an approved mitigation bank "in the event that regulatory permitting should become necessary". To ensure compliance with Fish and Game Code section 1602, CDFW recommends that the County condition the MND to include a mitigation measure requiring the Project proponent to notify CDFW prior to commencing any activity that may adversely impact any river, stream, or lake. 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.

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 the 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 MND 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 information regarding submittal of a Lake or Streambed Alteration notification, please go to <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

CDFW recommends the inclusion of the following new measure in the MND:

BIO MM-[X]: Prior to issuance of any grading permit the Project Applicant shall provide to the County written correspondence from the California Department of Fish and Wildlife (CDFW) confirming that CDFW has

either executed a Streambed Alteration Agreement (Agreement), or informed the Project Applicant that an Agreement is not needed.

Nesting Birds and Migratory Bird Treaty Act

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 as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act.

CDFW has documented occurrences of bird nesting outside of the nesting bird period identified (February 1 to August 31) in the draft MND. For example, owls nesting in January and September, hummingbirds nesting in January and February, and red-tailed hawks nesting in January and February. Given these documented excursions from the proposed nesting bird season, we recommend the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting birds and birds of prey. Nesting bird surveys should not be limited to work during a specific time frame (February 1 to August 31) due to recent changes in timing of avian breeding activity.

CDFW recommends the following revision of BIO MM-2:

BIO MM-2 **Nesting Birds.** ~~Vegetation Clearing Outside of the Migratory Nesting Bird Season (the nesting season generally occurs between February 1 and August 31).~~

As a condition of a grading permit, a migratory nesting bird survey of all ~~trees to be removed from~~ the site shall be conducted by a qualified biologist within 40 ~~3~~ days prior to ~~initiating tree removal or~~ vegetation clearing **or ground-disturbance activities** within 500 feet of a mature ~~tree~~. **Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.** A copy of the migratory nesting bird survey results report shall be provided to the Riverside County Environmental Programs Department (EPD). If the

survey identifies the presence of active nests, then the qualified biologist shall provide the Riverside County EPD with a copy of maps showing the location of all nests and an appropriate buffer zone around each nest sufficient to protect the nest from direct and indirect impacts. The size and location of all buffer zones, if required, shall be subject to review and approval by the Riverside County EPD and shall be no less than a 300-foot radius around the nest for non-raptors and a 500-foot radius around the nest for raptors. The nests and buffer zones shall be field checked ~~weekly~~ **daily** by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist and Riverside County EPD verify that the nests are no longer occupied and the juvenile birds can survive independently from the nests.

Monitoring: Monitoring is required. A qualified biologist shall conduct a ~~migratory~~ nesting bird survey of ~~all trees~~ **the project site** within ~~10~~ **3** days prior to initiating vegetation clearing **or ground-disturbance activities** ~~within 500 feet of a mature tree~~. The results of the ~~migratory~~ nesting bird survey shall be reviewed and approved by EPD prior to initiating **vegetation** removal or ground-disturbance activities ~~within 500 feet of any tree~~. If nesting birds are identified, the qualified biologist shall establish buffer zones around the active nests and shall mark such buffers with construction fencing. Fencing shall be evaluated on a weekly basis by the qualified biologist and shall be subject to field inspections by EPD staff ~~during the nesting season~~ **while the nests are active**, if warranted.

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). 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. 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

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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 for the Harvill and Rider (PPT190039, CZ 200008, CEQ 190175) Project (State Clearinghouse No. 2021080035), and recommends that the County address CDFW's comments and concerns prior to adoption of the MND to avoid, minimize, or mitigate Project impacts on biological resources. If you should have any questions pertaining to the comments provided in this letter, please contact Eric Chan at (909) 260-0027 or at Eric.Chan@wildlife.ca.gov.

Sincerely,

DocuSigned by:

8091B1A9242F49C...

Scott Wilson
Environmental Program Manager

Attachment 1: Mitigation and Monitoring Report for CDFW-Proposed Mitigation Measures

ec: **California Department of Fish and Wildlife:**

Heather Pert, Senior Environmental Scientist Supervisory
Eric Chan, Environmental Scientist

HCPB CEQA Program, Habitat Conservation Planning Branch
CEQAcommentletters@wildlife.ca.gov

State Clearinghouse:

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

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 for implementing the mitigation measure. 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 MM-[X]: Prior to issuance of any grading permit the Project Applicant shall provide to the County written correspondence from the California Department of Fish and Wildlife (CDFW) confirming that CDFW has either executed a Streambed Alteration Agreement (Agreement), or informed the Project Applicant that an Agreement is not needed.</p>	<p>Prior to issuance of any grading or construction permits by the County</p>	<p>Project Applicant</p>
<p>BIO MM-2 Nesting Birds. As a condition of a grading permit, a nesting bird survey of the site shall be conducted by a qualified biologist within 3 days prior to initiating vegetation clearing or ground-disturbance activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist will make every effort to avoid potential nest predation</p>	<p>Prior to issuance of any grading or construction permits by the County.</p>	<p>Project Applicant</p>

<p>as a result of survey and monitoring efforts. A copy of the nesting bird survey results report shall be provided to the Riverside County Environmental Programs Department (EPD). If the survey identifies the presence of active nests, then the qualified biologist shall provide the Riverside County EPD with a copy of maps showing the location of all nests and an appropriate buffer zone around each nest sufficient to protect the nest from direct and indirect impacts. The size and location of all buffer zones, if required, shall be subject to review and approval by the Riverside County EPD and shall be no less than a 300-foot radius around the nest for non-raptors and a 500-foot radius around the nest for raptors. The nests and buffer zones shall be field checked daily by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist and Riverside County EPD verify that the nests are no longer occupied, and the juvenile birds can survive independently from the nests.</p> <p>Monitoring: Monitoring is required. A qualified biologist shall conduct a nesting bird survey of the project site within 3 days prior to initiating vegetation clearing or ground-disturbance activities. The results of the nesting bird survey shall be reviewed and approved by EPD prior to initiating tree removal or ground disturbance. If nesting birds are identified, the qualified biologist shall establish buffer zones around the</p>		
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<p>active nests and shall mark such buffers with construction fencing. Fencing shall be evaluated on a weekly basis by the qualified biologist, and shall be subject to field inspections by EPD staff while the nests are active, if warranted.</p>		
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