



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



September 29, 2021

Vincent Acuna
 City of Rancho Cucamonga
 10500 Civic Center Dr.
 Rancho Cucamonga, CA 91730

Governor's Office of Planning & Research

September 29 2021

STATE CLEARINGHOUSE

Subject: Alta Cuvee Mixed Use Project
 SCH# 2021090012

Dear Vincent Acuna:

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; the CEQA lead agency) for the Alta Cuvee Mixed Use 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.

PROJECT DESCRIPTION SUMMARY

The Project includes the development of a 260-unit apartment complex in two four-story buildings on 5.2 acres. The Project is located at 12901-12939 Foothill Boulevard at the southeast corner of Foothill Boulevard and Etiwanda Avenue in the City of Rancho Cucamonga. The 260-unit complex would also include 1 live-work unit, 3,339 square feet of commercial space and a total of 465 parking spaces, with 265 parking spaces located in a below grade parking garage and the remaining 200 parking spaces located on a surface parking lot on the southern and eastern portions of the Project site. The Project also provides approximately 5,500 square feet of indoor amenity space, and outdoor amenity space within two courtyards and a paseo, including a pool and additional outdoor amenities other landscaping surrounding both buildings.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW agrees that an MND could be appropriate for the Project with the addition and implementation of specific and enforceable avoidance

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.

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. Following review of MND, CDFW offers the comments and recommendations presented 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. The comments and recommendations are also offered to enable the City 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 3503, 3503.5, and 3513. CDFW recommends that each of these be addressed prior to finalization of the Mitigated Negative Declaration.

Western Yellow Bat and Nesting Birds

While CDFW appreciates the inclusion of mitigation measure BIO-1, it is more appropriate to separate nesting bird and bat surveys into two measures based on the differences in survey methodology and timing.

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.

Birds have been documented nesting outside of the nesting bird period identified (February 15 to September 1) 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 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 15 to September 1) due to recent changes in timing of avian breeding activity.

CDFW also requests the following revisions and additions be made before the City adopts the MND (additions in bold and deletions in strikethrough) to ensure the surveys conducted follow established protocols and protect nesting birds anytime nesting is occurring:

BIO-1: Applicant shall ensure that impacts to nesting birds are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures. The Applicant shall designate aA qualified biologist experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology (e.g., Ralph et al. 19931 and United States Fish and Wildlife Service and/or CDFW-accepted species-specific survey protocols, available here: <https://www.wildlife.ca.gov/conservation/survey-protocols>); nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success (e.g., Martin and Geupel 19932); determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.

The Designated Biologist shall conduct a pre-construction survey at the appropriate time of day/night to identify nesting birds and ~~roosting bats~~ within

~~seventhree~~ days prior to the start of project activities including vegetation clearing and ground-disturbance. The reconstruction survey shall be a pedestrian-based, visual encounter survey, providing full coverage of the Project parcels. ~~The nesting bird survey shall occur when construction activities occur between February 15 and September 1 (i.e., nesting bird season) to detect active nests for MBTA-protected species.~~ **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 property; 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. Preconstruction surveys shall 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).**

If nesting birds are detected during pre-construction surveys, avoidance buffers shall be established, and biological monitoring shall be conducted during construction activities to avoid impacts to nesting birds (250-ft for raptors or special-status birds species and 50-ft for common bird species). If excluding work activities from any established buffers is not feasible, the qualified biologist may establish a modified buffer exclusion utilizing specific biological and/or ecological attributes of the project location and avian species. The active nest shall be monitored by the biologist for the duration of the construction until the young have fledged, or nest is no longer active. If the **Designated bBiologist** determines nesting activities could fail as a result of work activities, all work shall cease within the buffer exclusion, and no entry into the buffer will occur.

BIO-2: Bat Habitat Avoidance. No less than 60 days prior to initiating project activities, a CDFW-approved bat 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 identified as having potentially suitable bat roosting habitat by the CDFW-approved bat biologist shall be subject to additional nighttime surveys (bat surveys) during the summer months (i.e., June- August) to determine the numbers and bat species using the roost(s). The information collected during these additional bat surveys shall be used by the CDFW-approved bat biologist to develop species-specific measures to minimize impacts to roosting bats, should bats be detected using the site. The bat surveys shall be conducted by the CDFW-approved bat biologist using an appropriate combination of visual inspection, sampling, exit counts, and acoustic surveys. 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.

If the site supports a maternity roost(s) or special-status species, Applicant shall contact CDFW and conduct an impact assessment prior to commencing project activities to assist in the development of minimization and mitigation measures. Applicant shall compensate for impacts and losses to maternity roosts and/or special-status bat habitat through a mitigation strategy approved by CDFW.

Burrowing Owl

The MND does not identify or discuss burrowing owl (*Athene cunicularia*), a species of special concern. The Appendix B, Biological Resources Assessment states:

Burrowing owl is a CDFW SSC species that is associated with large expanses of (usually flat) grasslands and resides in small mammal burrows year around. Though the BSA is comprised of grassland and does include small mammal burrows (California ground squirrel), western burrowing owl is not expected to occur within the BSA for breeding or overwintering. The Project parcels are a relatively small (5.2 acres) undeveloped area surrounded by residential and commercial development. Anthropogenic disturbances (traffic, noise, mowing, and threats by domestic dogs) prevent the BSA from supporting burrowing owl.

CDFW disagrees with the conclusion that the Project site could not support burrowing owls. They are commonly found in disturbed areas surrounded by anthropogenic development. Given the oversight of not identifying and analyzing the impacts to burrowing owls in the MND, CDFW requests the City include the following mitigation measure:

BIO-3: Applicant shall designate a burrowing owl biologist (Designated Biologist) that is knowledgeable about the burrowing owl, including its natural history, habitat requirements, seasonal movements, and range, to survey and monitor for burrowing owls prior to project activities. The Designated Biologist shall complete necessary surveys, impact assessments, and associated reports following the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) or similar approach. The survey(s) shall encompass the entire project site and a 150-meter buffer surrounding it, and it shall occur at a time of the day when most burrowing owls are active. Pre-construction burrowing owl surveys shall also be conducted by the Designated Biologist 3 days prior to the start of project activities. If breeding season or pre-construction surveys confirm occupied burrowing owl habitat in or adjoining areas subject to project activities, the Applicant shall contact CDFW and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project activities, to assist in the development of avoidance, minimization, and mitigation measures. Mitigation may include acquisition and in-perpetuity conservation of occupied burrowing owl habitat. To avoid direct take of owls, the Designated Biologist shall establish a conservative avoidance buffer and monitoring shall occur, if deemed necessary, based on identified activities. If relocation/passive exclusion is deemed necessary Applicant shall prepare a Burrowing Owl Exclusion Plan for CDFW review and approval, in accordance with Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).

Please be aware that CDFW does not recommend the exclusion of owls using passive relocation unless there are suitable burrows available within 50-100 meters of the closed burrows, a distance generally within a pair's territory (Trulio 1995, CDFG 2012), and the relocation area is protected through a long-term conservation mechanism (e.g., conservation easement). Burrow exclusion should only be conducted during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty by site surveillance, camera, and/or scoping. CDFW's *Staff Report on Burrowing Owl Mitigation* also includes that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until:

- A Burrowing Owl Exclusion Plan (Appendix E in the Staff Report) is developed and approved by the applicable local CDFW office;
- Permanent loss of occupied burrow(s) and habitat and temporary exclusion is mitigated in accordance with guidelines provided in the Staff Report;
- Site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided.

- Young of the year have fledged, as confirmed by daily monitoring for one week, if the exclusion will occur immediately after the end of the breeding season.
- Excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight).

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 of Rancho Cucamonga in identifying and mitigating Project impacts on biological resources. CDFW 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.

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.

Sincerely,

DocuSigned by:

DF423498814B441...

Scott Wilson
Environmental Program Manager

Attachment: Draft Mitigation Monitoring and Reporting Program for CDFW-proposed Mitigation Measures

ec: Office of Planning and Research, State Clearinghouse, Sacramento

HCPB CEQA Coordinator
Habitat Conservation Planning Branch

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

REFERENCES

- California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. (https://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)
- Trulio, L.A. (1995) Passive relocation: a method to preserve burrowing owls on disturbed sites. *Journal of Field Ornithology*, 66, 99-106.

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 ensure that impacts to nesting birds are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures. The Applicant shall designate aA qualified biologist experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology (e.g., Ralph et al. 19931 and United States Fish and Wildlife Service and/or CDFW-accepted species-specific survey protocols, available here: https://www.wildlife.ca.gov/conservation/survey-protocols); nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success (e.g., Martin and Geupel 19932); determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.</p> <p>The Designated Biologist shall conduct a pre-construction survey at the appropriate time of day/night to identify nesting birds and roosting bats within seventhree days prior to the start of construction. The reconstruction survey shall be a pedestrian-based, visual encounter survey, providing full coverage of the Project parcels. The nesting bird survey shall occur when construction activities occur between February 15 and September 1 (i.e., nesting bird season) to detect active nests for MBTA-protected species. 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 property; 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. Preconstruction surveys</p>	<p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p>	<p>Project Proponent</p>

<p>shall 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).</p> <p>If nesting birds are detected during pre-construction surveys, avoidance buffers shall be established, and biological monitoring shall be conducted during construction activities to avoid impacts to nesting birds (250-ft for raptors or special-status birds species and 50-ft for common bird species). If excluding work activities from any established buffers is not feasible, the qualified biologist may establish a modified buffer exclusion utilizing specific biological and/or ecological attributes of the project location and avian species. The active nest shall be monitored by the biologist for the duration of the construction until the young have fledged, or nest is no longer active. If the Designated Biologist determines nesting activities could fail as a result of work activities, all work shall cease within the buffer exclusion, and no entry into the buffer will occur.</p>		
<p>BIO-2: Bat Habitat Avoidance. No less than 60 days prior to initiating project activities, a CDFW-approved bat 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 identified as having potentially suitable bat roosting habitat by the CDFW-approved bat biologist shall be subject to additional nighttime surveys (bat surveys) during the summer months (i.e., June- August) to determine the numbers and bat species using the roost(s). The information collected during these additional bat surveys shall be used by the CDFW-approved bat biologist to develop species-specific measures to minimize impacts to roosting bats, should bats be detected using the site. The bat surveys shall be conducted by the CDFW-approved bat biologist using an appropriate combination of visual inspection, sampling, exit counts, and acoustic surveys. 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.</p> <p>If the site supports a maternity roost(s) or special-status species, Applicant shall contact CDFW and conduct an impact assessment prior to commencing project activities to assist in the</p>	<p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p>	<p>Project Proponent</p>

<p>development of minimization and mitigation measures. Applicant shall compensate for impacts and losses to maternity roosts and/or special-status bat habitat through a mitigation strategy approved by CDFW.</p>		
<p>BIO-3: Applicant shall designate a burrowing owl biologist (Designated Biologist) that is knowledgeable about the burrowing owl, including its natural history, habitat requirements, seasonal movements, and range, to survey and monitor for burrowing owls prior to project activities. The Designated Biologist shall complete necessary surveys, impact assessments, and associated reports following the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) or similar approach. The survey(s) shall encompass the entire project site and a 150-meter buffer surrounding it, and it shall occur at a time of the day when most burrowing owls are active. Pre-construction burrowing owl surveys shall also be conducted by the Designated Biologist 3 days prior to the start of project activities. If breeding season or pre-construction surveys confirm occupied burrowing owl habitat in or adjoining areas subject to project activities, the Applicant shall contact CDFW and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project activities, to assist in the development of avoidance, minimization, and mitigation measures. Mitigation may include acquisition and in-perpetuity conservation of occupied burrowing owl habitat. To avoid direct take of owls, the Designated Biologist shall establish a conservative avoidance buffer and monitoring shall occur, if deemed necessary, based on identified activities. If relocation/passive exclusion is deemed necessary Applicant shall prepare a Burrowing Owl Exclusion Plan for CDFW review and approval, in accordance with Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).</p>	<p>Before commencing ground- or vegetation-disturbing activities/ Throughout project duration</p>	<p>Project Proponent</p>