



U.S. Fish and Wildlife Service
Palm Springs Fish and Wildlife Office
777 East Tahquitz Canyon Way, Suite
208
Palm Springs, California 92262
760-322-2070
FAX 760-322-4648



California Department of Fish and
Wildlife
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, California 91764
909-484-0167
FAX 909-481-2945

In Reply Refer To:
FWS/CDFW-WRIV-21B0142-22CPA0016

November 7, 2021
Sent by email

Riana Fisher, Program Manager
Western Riverside Council of Governments
Riverside County Habitat Conservation Agency
3390 University Ave. Suite 450
Riverside, CA 92501

Governor's Office of Planning & Research

Nov 08 2021

Subject: Mitigated Negative Declaration
Steele Peak Inaugural Trail
State Clearinghouse No. 2021100147

STATE CLEARINGHOUSE

Dear Riana Fisher:

The California Department of Fish and Wildlife (CDFW) and the United States Fish and Wildlife Service (Service), together the Wildlife Agencies, have reviewed the Mitigated Negative Declaration (MND) for the Steele Peak Inaugural Trail Project (Project) prepared by the Riverside County Habitat Conservation Agency (RCHCA) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.^a The proposed Project would be located within the Plan area of the Habitat Conservation Plan for the Stephens' Kangaroo Rat (SKR HCP) in western Riverside County California. The Service issued a section 10(a)(1)(B) Incidental Take permit for the SKR HCP in accordance with the Endangered Species Act of 1973 (Endangered Species Act), as amended (16 U.S.C. 1531 et seq.) on May 2, 1996. CDFW issued Habitat Conservation Plan Approval and Take Authorization for the SKR HCP per Section 2081, *et seq.*, of the California Fish and Game Code on May 6, 1996.

The SKR HCP addresses the potential impacts to the Stephens' kangaroo rat (*Dipodomys stephensi*, SKR) and its habitat due directly or indirectly to future development of both private and public lands within the 533,954-acre SKR HCP plan area and the establishment of seven Core Reserves to be permanently conserved and managed for the conservation, preservation, restoration and enhancement of SKR and its habitat (Implementing Agreement pg. 6). The proposed trail would be located within the 250-acre portion of the Steele Peak Core Reserve (Reserve) that is owned and managed by the RCHCA

As discussed below, the Wildlife Agencies are uncertain if the proposed trail is consistent with the SKR HCP and request a meeting to discuss our concerns and better understand the RCHCA's approach to the proposed Project as it relates to SKR HCP implementation. We are also concerned that the impacts to SKR from the proposed trail were not fully addressed. We are providing comments below regarding issues or impacts that should be addressed in the MND or other Project CEQA document. Our comments should not be taken as indication that the

^a A 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.

adoption of suggested impact mitigation measures render the proposed Project consistent with the SKR HCP.

SERVICE ROLE

The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service offers the following comments pursuant to the Endangered Species Act, and in keeping with Service's mission to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

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 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 Project site is bounded on the east by Forrest Road, and on the west by Mountain Lane within unincorporated Riverside County, California. The Project site contains rolling hills covered in a mix of native and invasive vegetation. Unauthorized dirt roads and trails crisscross the area. Scattered single-family homes are located to the south and southeast of the Reserve. A decommissioned landfill is located north and northeast of the Reserve. Conservation land owned and managed by the Western Riverside County Regional Conservation Authority is located west of the site.

Project Description

The proposed Project is the addition of a 1.2-mile pedestrian loop trail to the Steele Peak core reserve. The trail would be located on existing but un-used roads. Composite or recycled plastic lumber fencing would be installed to mark a 6-foot width of the existing roads as the trail. The remaining approximately 4-feet of road width would be blocked with fencing or rock obstruction. A 10-vehicle parking area would be leased from Waste Resources at the end of Forrest Road on the adjacent landfill north of the proposed trail entrance. The proposed Project also includes basic wayfinding, interpretive signage, seating areas, and access gates. The trail would be accessed from the parking area along a Southern California Edison access road within an existing easement. A staging area, located off Forest Road in a previously disturbed area, is also included in the proposed Project.

The Steel Peak Reserve has historically not been open to the public and an assortment of gates and fences surround the RCHCA property. Fencing has been removed in many locations for unauthorized access. Evidence of trespass is visible throughout the Reserve with tracks from horses, mountain bikes, trucks, and hikers. Illegal dumping has been common but is currently controlled. The proposed Project would open the Reserve to public access.

COMMENTS AND RECOMMENDATIONS

The Wildlife Agencies have reservations about Project consistency with the SKR HCP and are 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, the Wildlife Agencies offer the comments and recommendations presented below to assist the RCHCA 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 CDFW to adequately review and comment on the proposed Project with respect to the Project's compliance with Fish and Game Code sections 1602, 2081, 2085, 2800, 3503, 3503.5, and 3513. The Wildlife Agencies recommend that each of the comments below be addressed and that the MND or other CEQA document be recirculated.

Would the Project Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

COMMENT 1

Section IV Page 20

Issue: SKR HCP Implementation. The proposed Project Activities include development of a trail system in a Core Reserve for SKR. The MND states that the proposed Project is not

“incompatible with the SKR HCP” and identified potential impacts are stated to be reduced to less than significant impacts due to the incorporation of mitigation measures.

If the RCHCA’s position is that the proposed trail is a public facility, then it is subject to section 5.E.3.b. of the SKR HCP, which has not been implemented. RCHCA has not conducted SKR surveys in areas to be affected by the Project, developed avoidance and minimization measures, or identified replacement habitat to offset loss of SKR habitat in the Reserve. The siting of the proposed trail in the Reserve also runs counter to the direction in SKR HCP section 5.E.5 which commits that the entities responsible for the management of the SKR HCP core reserves will seek to avoid or minimize impacts to SKR whenever possible. It is possible to accomplish the access management goals of the trail through other means and the recreational benefits can be accomplished at sites that are not within the SKR core reserves.

Specific impact: It is not clear to the Wildlife Agencies that the proposed Project is a “public facility” which is identified in the SKR HCP Implementation Agreement (IA), Section III A.1.a.3 (page 12): “Construction of public facilities, including but not limited to roadways and other public facilities and projects identified in general plans, capital improvement programs or transportation improvement programs, and cooperative projects undertaken among public agencies for public health, safety and welfare purposes.”

The proposed trail is not included in the discussion of trails in the SKR HCP. It is also not included in the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) covered trails. The SKR HCP described the Steele Peak area(s) as having unofficial trails but the SKR HCP did not include any comprehensive plan to incorporate or create trails within the core reserve.

The IA identifies that encroachment into the reserve by any public facility shall occur only after consultation with the Service and CDFW to determine appropriate and reasonable methods to avoid and minimize impacts to SKR and its habitat. The Wildlife Agencies identified significant issues regarding the construction of trails in the Reserve during meetings with the RCHCA in 2020 and 2021 that have not been addressed. These issues included, but are not limited to, the mechanism in the SKR HCP to address the installation of proposed Project within the core Reserve, the need for Project -specific SKR surveys in areas that would be affected by the proposed trail, the need for an analysis of recreational impacts on SKR habitat in the Reserve and funding for operation and maintenance of the proposed facility.

The Wildlife Agencies consider the conversion of Reserve lands to a designated recreation facility to be a permanent impact and a conversion from the conservation land use identified in the SKR HCP and Implementation Agreement. The Project would create public recreational opportunities within a reserve designated solely for the conservation and perpetuity management of SKR, without replacement of the affected SKR habitat values.

Why impact would occur: The construction of a new trail within the Reserve will cause loss

of habitat as well as introduce recreational activities into the Reserve. The MND identifies that one intent or benefit of adding public access to the Reserve is to decrease the current level of existing and unauthorized public use of the Reserve. This presumes that increasing authorized access will decrease unauthorized access, reduce management effort, and also maintain or possibly improve conservation values of the reserve. However, both passive and active recreational trail use (e.g., hiking, mountain biking, cycling, and equestrian) have been identified as a major cause of decline of native biodiversity within protected areas and to result in the need for intensified long-term management activities (Thompson 2015). Trail use impacts that extend beyond the trail edge are well documented and are referred to as zone of influence or threshold of impacts (Reed and Merenlender 2008, Miller et al. 2020). Research on recreation in protected areas has shown that the zone of influence varies with the species under consideration and can range from a few meters (butterflies) to hundreds of meters for large mammals (bears and mountain lions) (Reed 2011, Miller et al. 2020). The distance for threshold of impacts for small mammals, such as SKR, is not well studied (Miller et al. 2020).

Currently, the MND only addressed the impact of the footprint of the trail and not the impacts that are associated with the zone of influence. To properly evaluate the impact of the trail and permanent loss of SKR habitat the RCHCA needs to understand the zone of influence around the trail and mitigate for the loss of habitat impacted by the presence of the trail. To be consistent with SKR HCP section 5.E.3.b. the RCHCA would either replace the occupied portion of the trail and zone of influence or demonstrate that the trails will not have a detrimental impact on SKR in the Reserve. This would require establishing baseline distribution of SKR in the portion of Reserve where the trail is proposed before installation of the proposed Project, monitoring impacts of trails on SKR in the Reserve, and replacing any affected occupied habitat values.

To minimize significant impacts: The creation of trails in the core reserves is not contemplated in the SKR HCP or Implementation Agreement. As stated above, the siting of the proposed trail in the Reserve also runs counter to the direction in SKR HCP section 5.E.5 and section 5.E.3.b.

Compliance with approved habitat plans, such as the SKR HCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the SKR HCP (reduction of occupied habitat) as a result of this Project is necessary to fulfill CEQA requirements.

The Wildlife Agencies request that the RCHCA revise and recirculate the MND to include and analysis of impacts to SKR distribution prior to Project implementation and final approval. The level of significance should be revised from “Less than significant” to “Significant” for biological resources unless the RCHCA provides mitigation and an adequate analysis to the contrary. The Lead agency must commit itself to mitigation and either adopt performance standard for future approval or analyze alternatives in detail. The

strategy for identifying and evaluating the mitigation should be identified and in place before the Project is initiated.

COMMENT 2

Section IV Page 20

Issue: Loss of habitat in the Reserve impacts Public/Quasi-Public Lands (PQP) in the MSHCP and should be replaced to keep the MSHCP Conservation Area whole.

Specific impact: The proposed Project footprint would permanently remove a minimum of 1.66 acres of PQP lands associated with the Steele Peak Reserve administered by RCHCA. Additional losses may occur if the trail zone of influence is considered, as described above. If replacement lands are not provided this will affect the conservation strategy for the MSHCP.

Why impact would occur: The proposed project reduces the size of the Conservation Area by eliminating the function of existing PQP lands. The proposed trail was not covered in the MSHCP. The SKR core reserves are identified as existing conservation and contribute to the MSHCP Conservation Area. The MSHCP has a requirement that PQP lands removed by permittees be replaced at a minimum 1:1 ratio. RCHCA is not an MSHCP permittee but should not ignore the effects of the proposed Project on the MSHCP Conservation Area.

To minimize significant impacts: The area of the Core reserve directly or indirectly affected should be replaced at a minimum of 1:1 ratio.

COMMENT 3

Issue: The MND states that habitat will be permanently removed from the Core Reserve by Project implementation. The SKR HCP requires that the loss of SKR habitat within the Core Reserve be replaced. As referenced in comment 1, section 5.E.3.b requires replacement of SKR habitat removed as a result of a public project.

Specific impact: The MND identifies a total of 1.80 acres of permanent impacts from Project implementation; including 1.66-acre of impacts to disturbed habitats (existing trails, fuel modification zones, and ruderal), 0.13-acre of non-native grassland, and 0.01- acre of Riversidean sage scrub/rock outcrop impacts would occur from the creation of a 6-foot wide trail. The permanent impacts would occur within the Reserve and would permanently remove 1.8 acres from the Core Reserve system. The MND does not discuss additional trail impacts, such as pets and humans going off trail and disturbing wildlife, additional habitat may become inhospitable to wildlife and permanently impacted as a result of the proposed trails.

Why impact would occur: Habitat would be permanently removed for the Reserve by soil covered with trail material and then through compaction overtime from trail use. The option to remove public access once open is improbable and therefore all impact should be considered permanent.

Evidence impact would be significant: The Reserve was added to the Core Reserve system within the SKR HCP as 250 acres within this parcel. Project implementation would remove that conservation habitat from the Reserve permanently and may lead to more habitat loss as the public uses the area increases over time. If habitat is removed from the Reserve for the construction of allowed public facilities, the SKR HCP requires replacement of the habitat as outlined in the SKR HCP Implementation Agreement IA, Section III A.1.a.3 (page 12), “.... that in the event that such construction disturbs occupied SKR habitat or results in take of SKR, the agency or agencies sponsoring such construction (“Sponsoring Entity”) shall be required to acquire and permanently dedicate one acre of occupied SKR habitat for each acre of occupied SKR habitat disturbed (“Mitigation Land”) to the Agency or its designee to be held, managed and maintained pursuant to the terms of the HCP. The location of such Mitigation Land shall be subject to approval by the Service, the Department and the Agency.”

To address habitat loss identified in Comments 1 -3, the Wildlife Agencies recommend the inclusion of the following new measure in the MND:

MM BIO-X: Permanent impacts to SKR HCP core reserves shall be replaced with purchased replacement lands at not less than a 1:1 ratio. RCHCA shall identify mitigation land suitable for the replacement of the portion of the SKR HCP core reserve permanently affected. The Mitigation Lands shall be agreed upon by CDFW, and USFWS. Agreed upon Mitigation Lands shall be included in the core reserve system prior to Project ground disturbance.

COMMENT 4

Section IV Page 20

Issue: The MND states that the proposed Project would be consistent with the MSHCP, however, trails located in MSHCP Conservation Areas are required to be consistent with MSHCP guidelines for trails (MSHCP Section 7), identified on the approved trails map (Figure 7-4), and be jointly approved by the Western Riverside County Regional Conservation Authority (RCA) and the Wildlife Agencies.

Specific impact: The MSHCP identifies specific covered trails in the MSHCP in conserved habitat and this is not a covered trail. The proposed Project would be adding a trail in the MSHCP Conservation Area.

Why impact would occur: The proposed project is not a Covered Trail as described in the MSHCP. As such, the proposed trail is not an MSHCP covered activity. Please correct the text in the recirculated MND or other Project CEQA document.

COMMENT 5

Issue: The Wildlife Agencies are concerned that the proposed funding is inadequate to provide the necessary maintenance, management and monitoring of the proposed recreational facility. The MND discussed an endowment but lacked a justification for the sufficiency of

the endowment capital, a projection of the annual income generated, and estimates of annual maintenance, management and monitoring costs. The Wildlife Agencies are concerned that the funding is inadequate to protect the core reserve function. The MND should be clear that SKR HCP fees cannot be used to manage the proposed trail facility.

Specific impact: Inadequate funding for trail maintenance, management and monitoring could result in increased unauthorized access, expansion of the trail use zone of influence, degradation of habitat from trampling, and loss of habitat for SKR.

Why impact would occur. The RCHCA identified a million-dollar endowment but does not discuss the adequacy of this funding for the maintenance, management and monitoring of the trail. A million-dollar endowment would provide \$50,000 a year at a 5% interest rate, which is currently an optimistic rate of return. Depending on the rate of return, the generated income could vary from \$10,000 to \$50,000 annually.

To minimize significant impacts: The RCHCA should provide a detailed list of the maintenance, management and monitoring activities required and calculate the funding needed to accomplish those tasks and relate that cost to the estimated projected income from the endowment. The Wildlife Agencies recommend a habitat management and monitoring plan be developed to identify annual costs for the maintenance, management and monitoring of the trail. These costs should include maintenance of trail infrastructure; personnel cost for enforcement, management, and educational outreach; invasive species control, and habitat restoration from trail impacts. The necessary endowment amount should be calculated based on annual trail management costs

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 6

Section 4. Biological Resources Page 16

Section Appendix B: Biological Resources Technical Report Page 65-68

Issue: The Wildlife agencies are concerned that the MND lacks analysis of the magnitude or nature of incremental change to the environmental baseline from proposed active recreation within the habitat area. Analysis of potential significance direct and cumulative impacts from recreation to species identified as a candidate, sensitive, or special status species was not performed. For instance, the MND states that the proposed Project's implementation will impact 0.01-acres of suitable coastal California gnatcatcher (*Polioptila californica californica*; CAGN) habitat that would not result in a substantial adverse effect to the species. CAGN are known to occur on the reserve, but no distribution information was provided to support this assertion. Generally, the MND does not analyze recreational trail use impacts on habitat and wildlife.

Specific impact: The MND states the Project site contains suitable habitat for 24 sensitive

wildlife species, including SKR, CAGN, the Quino checkerspot butterfly (*Euphydryas editha quino*, QCB), and burrowing owl (*Athene cunicularia*, BUOW). The MND states the use of existing trails, narrowing of the existing trails, installation of fencing, and regulated recreation will not result in impacts to special status species. Further, the MND states the Project will result in a “net benefit” to habitat within the reserve. This assertion is not supported by an analysis or discussion in the MND. And, as discussed above, the literature on conservation and recreation indicates the opposite.

Why impact would occur: The MND does not discuss or analyze the effects of passive recreation on wildlife and the existing habitat. Although less destructive to habitat than Off-Highway Vehicle (OHV) use, passive recreation may cause disturbance to wildlife, such as nesting birds and ground dwelling mammals such as SKR. Changes to the landscape and habitat may occur as a result of the introduction of predator pet species, increased soil compaction, introduction of invasive species, increased noise levels, human and pet presence, and increased litter. The MND does not provide a frequency or baseline assessment for which illegal recreation is occurring with the Reserve and does not include a plan for determining if a reduction in illegal recreation has been achieved by Project implementation. The MND does not consider that the Project’s intent to provide legal public access may potentially increase recreation, human presence, and thus direct and indirect disturbance within the Reserve.

Evidence impact would be significant: The MND lacks informed consideration of significant and adverse changes to the environmental baseline from recreation use. The MND also fails to consider certain permanent impacts to the Reserve which would result from the Project. Without providing evidence that the construction of trails and passive recreation will not negatively impact wildlife; or assessing the potential for increased human disturbance related to passive recreation, the Wildlife Agencies do not concur that the mitigation measures proposed by the Project Proponent will avoid, minimize, or mitigate the impacts to a level below significant adverse effect.

To minimize significant impacts: If the RCHCA believes the authorized recreation presence will support or benefit management of the Reserve, corroborating information should be provided in the recirculated MND or other CEQA document. A Habitat Management and Monitoring Program with performance standards and mitigation strategies that are required in the event that the performance standards are not met, should be established. A monitoring program should be established to document and analyze pre- and post- Project distribution of sensitive species on the Reserve and assess performance standards. If monitoring indicates that performance standards are not met, offsetting (mitigating) habitat replacement strategies should be initiated. A Habitat Management and Monitoring Program with performance standards should be attached to the recirculated MND or other CEQA document. The recirculated MND should also include mitigation commitments that would be triggered if the performance standards are not met.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special

status species in local or regional plans, policies, or regulations, or by either of the Service or the Department [CDFW]?

To address species issues identified above, the Wildlife Agencies recommend the following revisions to the proposed mitigation measures (removed language in ~~strikeout~~ and added language in **bold**):

Revision of MM BIO-3:

MM BIO-3: The following conservation measures will be implemented to ensure protection for the Quino checkerspot butterfly (QCB): 1) A qualified biologist **with QCB experience** will conduct a pre-construction host plant survey of the impact area **including a 500 foot buffer and mark any host plants with pin flags**, 2) The ~~designated-QCB~~ biologist shall oversee construction activities, provide recommendations for host plant avoidance and suitable habitat, and further minimize impacts, as warranted, 3) Work within and adjacent to suitable habitat shall be conducted outside flight and growth season (February 1st to July 31st), 4) Standard Best Management Practices (BMPs) will be implemented to limit the release of fugitive dust, and 5) Any QCB observations will be reported to the RCHCA, RCDWR, and USFWS **within 1 working day**. If suitable habitat (host plants) cannot be avoided, focused USFWS protocol QCB surveys shall be conducted by a biologist possessing a valid federal Section 10(a)1(A) permit to determine the presence/absence in the proposed Project vicinity. The surveys will follow guidelines outlined in the 2014 USFWS “Quino Checkerspot Butterfly Survey Guidelines.” A final report of the findings, including recommendations and mitigation measures, if detected on site, shall be prepared by a qualified biologist, and submitted to the RCHCA, RCDWR, and USFWS. **If take of QCB cannot be avoided incidental take authorization will be required.**

Revision of MM BIO-4

MM BIO-4: Prior to construction, if work is to occur between February 15th and July 1st, a ~~USFWS biologist possessing a valid federal Section 10(a)1(A) permit for~~ coastal California gnatcatcher (CAGN) ~~permitted biologist~~ shall conduct a preconstruction and breeding status survey within the Riversidean sage scrub located within 500 feet of the proposed Project area. This will determine if any active CAGN nests are **within or** adjacent to the proposed Project area which may be indirectly impacted. Should the ~~study~~ **CAGN biologist** and report show, ~~to the satisfaction of the RCHCA and RCDWR,~~ **determine** that CAGN nests are not present adjacent to the construction area, approval may be granted to commence project activities ~~within the CAGN nesting season from February 15th through July 1st.~~ **within the Project area or within 500 feet of the impact-Project area, then a 500-foot no construction-entry buffer will be established. No people or equipment** will be allowed within the buffer until **the CAGN biologist determines the nest is no longer active and the family group has left the buffer area.**

Revision of MM BIO 5-Burrowing Owl

Take of individual burrowing owls and their nests are prohibited under Fish and Game Code; therefore, to ensure compliance with all applicable laws pertaining to birds of prey, CDFW recommends that RCHCA include a revised mitigation measure for burrowing owls in the MND. If burrowing owl are detected, CDFW requests notification within seven (7) days of detection and consultation on impact assessment with a specific and enforceable mitigation plan. CDFW recommends the new mitigation measure include the text below, as a minimum, to address potential detection of burrowing owl.

~~MM BIO-5: 30-day burrowing owl (BUOW) preconstruction survey will be conducted immediately prior to ground disturbance to ensure BUOW protection and compliance with the conservation goals as outlined in the MSHCP and CEQA. The survey will be conducted in compliance with both MSHCP and California Department of Fish and Wildlife (CDFW) guidelines. A findings report prepared by a qualified biologist shall be submitted to the RCHCA and RCDWR prior to ground disturbance. If BUOW are detected on site during the 30-day preconstruction survey within the BUOW breeding season (February 1st to August 31st), then construction activities shall be limited to beyond 300 feet of the active burrows until a qualified biologist has confirmed that no signs of active nesting behavior are observed. In addition to monitoring breeding activity, if construction is initiated during the breeding season, a BUOW Protection Plan will be developed and approved by CDFW and RCHCA.~~

To ensure compliance with Fish and Game Code sections 86, 3503, and 3503.5, an appropriately qualified biologist shall conduct a burrowing owl preconstruction survey of the Project area no more than 30 days prior to Project activities to confirm absence of this species. If burrowing owls are detected during preconstruction surveys RCHCA shall notify CDFW within three (3) days of detection and shall prepare an impact assessment to submit to CDFW for review following the recommendations and guidelines provided in CDFW's Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).

If suitable burrowing owl habitat is found onsite, the RCHCA shall have a qualified biologist, pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity within three (3) days prior to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other "ornamentation," feathers, prey remains, etc. If it is evident that the burrows are actively being used, Permittee shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls. CDFW shall be notified in writing of detection of active burrows within three (3) days.

COMMENT 7

Issue: The MND stated that suitable SKR habitat is present in the Project area. However, trapping for SKR was not conducted to determine the distribution of SKR and potential

Project impacts are not identified in the Project area.

The MND states, “If potential SKR burrows may be impacted, adjustments to the trail alignment or width will be made to ensure no direct and/or indirect impacts occur to the species as a result of project initiation and operation.” The MND does not describe how the adjustment of the alignment and the width of the Trail will avoid impacts. The MND does not describe what distance between the trail and burrow would be sufficient to avoid impacts to SKR and if the trail alignment and width could be altered since the trail is following an existing road. SKR are known to favor dirt roads.

Specific impact: A total of 1.80 acres of suitable and potentially occupied habitat will be directly permanently impacted. The zone of influence from human and domestic animal use of the proposed trail is not discussed. The Wildlife Agencies expect SKR in and near the project footprint to be displaced by the Project construction and use.

Why impact would occur: Focused surveys (trapping) for SKR was not conducted. Trapping has been shown to be the best method to determine SKR presence and distribution and accordingly is the methodology included in the range-wide SKR monitoring protocol (Spencer et. al., 2021.) adopted by the RCHCA. Assessment of surface sign may reveal the presence of kangaroo rats but cannot be relied upon to indicate distribution and may result in impacts to SKR as the absence of surface sign maybe incorrectly interpreted as absence of the species (Harkins et.al, 2019). It is also important to note, the 2007 Dudek report cited in the MND MM BIO 6 used surface sign detection within a multifaceted strategy that also incorporated habitat mapping and trapping grids. Thus, the MND’s reference to this report is incomplete and inappropriate, as used, and the Wildlife Agencies have recommended removal of the reference from MM BIO 6.

Evidence impact would be significant: Due to the lack of trapping survey data the distribution of SKR in the Project area cannot be determined and the Project will be unable to avoid SKR impacts as planned.

The Wildlife Agencies recommend the following revision of MM BIO-6:

MM BIO-6: Before ground disturbance, a ~~USFWS SKR-permitted~~ biologist **holding a valid section 10(A)(1)(a) endangered species recovery permit for SKR** shall conduct a ~~preconstruction trapping surveys to determine the distribution of SKR in the Project footprint and a 500-foot buffer area of the impact area to determine the presence and/or absence of sign which includes burrows, scat, runways, tail drags, tracks, and dust bowls. A survey report shall be sent to the RCHCA and the Wildlife Agencies who may jointly determine Project impacts to SKR and if trail alignment adjustment would be sufficient to avoid significant effects to SKR. The purpose of the survey is to determine if any suitable SKR burrows are located in the construction vicinity which may be directly or indirectly impacted. Should the study and report show, to the satisfaction of the RCHCA, that SKR burrows can be avoided within the construction area, approval will be granted to commence project activities. As stated by Dudek, “A biologist familiar with SKR surface~~

~~sign typically can generate a reasonably accurate “gestalt” of habitat quality and relative abundance of individuals based on this information. A simple checklist of presence/absence and abundance of these kinds of surface sign for each sample transect should be adequate to generally and reliably characterize SKR activity in the area.” If potential SKR burrows may be impacted, adjustments to the trail alignment or width will be made to ensure no direct and/or indirect impacts occur to the species as a result of project initiation and operation.~~

Nesting Birds and Migratory Bird Treaty Act

Please note that 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 Treaty Act.

CDFW has documented occurrences of bird nesting outside of the nesting bird period indicated in the draft MND (February 1 to August 31). For example, owls nesting in January, hummingbirds nesting in January and February, and red-tailed hawks nesting in January and February. Given these documented exceptions to the presented nesting bird time frame, 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 MM BIO-7:

MM BIO-7: Regulatory requirements for potential direct/indirect impacts to protected avian species will require compliance with ~~FGC Section 3503~~ **Fish and Game Code sections 3503, 3503.5, and 3513.** ~~Construction performed outside the nesting season (between September 1st and January 31st) does not require preconstruction nesting bird surveys.~~ **If construction is proposed between February 1st and August 31st** during nesting season, a qualified avian biologist will conduct the nesting bird survey(s) no more than three (3) days prior to ground disturbance to document the presence or absence of nesting birds within or directly adjacent (100 feet) to the impact area. The survey(s) will focus on identifying any raptors and/or bird nests that would be directly or indirectly affected by construction activities.

~~The survey(s) will focus on identifying any raptors and/or bird nests that would be directly or indirectly affected by construction activities. If active nests are documented, species-specific measures will be prepared by a qualified avian biologist and implemented to prevent active nest abandonment. At a minimum, construction in the vicinity of a nest will be postponed until the chicks have fledged. The perimeter of the nest setback zone will be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and affiliated construction personnel and activities will be restricted from the area.~~

Surveys shall be conducted in proposed work areas, staging and storage areas, and soil, equipment, and material stockpile areas. For passerines and small raptors, surveys shall be conducted within a 200-foot radius surrounding the work area (in areas where access is feasible). For larger raptors, the survey area shall encompass a 500-foot radius. Surveys shall be conducted during weather conditions suited to maximize the observation of possible nests and shall concentrate on areas of suitable habitat. If a lapse in Project-related work of three days or longer occurs, an additional nest survey shall be required before work can be reinitiated. If nests are encountered during any preconstruction survey, a qualified biologist shall determine if it may be feasible for construction to continue as planned without impacting the success of the nest, depending on conditions specific to each nest and the relative location and rate of construction activities. If the qualified biologist determines construction activities have potential to adversely affect a nest, the biologist shall immediately inform the construction manager to halt construction activities within minimum exclusion buffer of 50 feet for songbird nests, and 200 to 500 feet for raptor nests, depending on species and location. Active nest(s) within the Project site shall be monitored by a qualified biologist during construction if work is occurring directly adjacent to the established no-work buffer. Construction activities within the no-work buffer may proceed after a qualified biologist determines the nest is no longer active due to natural causes (e.g., young have fledged, predation, or other non-human causes of nest failure).

If active nests are documented, species-specific measures will be prepared by a qualified avian biologist and implemented to prevent active nest abandonment. At a minimum, construction in the vicinity of a nest will be postponed until the chicks have fledged. The perimeter of the nest setback zone will be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and affiliated construction personnel and activities will be restricted from the area. A survey report by a qualified avian biologist verifying that no active nests are present, or that the young have fledged, will be submitted to the RCHCA and RCDWR for review and approval prior to construction commencement in the nest-setback zone. The qualified biologist will serve as a construction monitor during those periods when construction activities occur near active nests to ensure that no potential nest impacts occur. A final monitoring and findings report, prepared by the qualified biologist, will be submitted to the RCHCA and RCDWR documenting compliance with the FGC. Any nest permanently vacated for the season would not warrant protection pursuant to the FGC.

CDFW COMMENTS

Lake and Streambed Alteration Program

Based on review of material submitted with the MND and review of aerial imagery multiple drainage features are within or adjacent to the Project site. The Project proposes to construct and install puncheon bridges to allow the proposed trail to cross several ephemeral drainages. Designs of the puncheon bridges were not included in the MND. The MND did not discuss if temporary impacts would occur from the installation of the puncheon bridges or consider and discuss the potential permanent effects of shading to the drainage features. 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. To ensure compliance with Fish and Game Code section 1602, CDFW recommends the MND to include a mitigation measure for notifying CDFW's Lake and Streambed Alteration Program. 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 a Lake or Streambed Alteration notification package, please go to <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

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

MM BIO-[X]: Prior to initiation of any ground disturbance activities, the RCHCA shall receive 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 that an Agreement is not needed.

SUMMARY

For the reasons discussed above, the Wildlife Agencies are uncertain if the proposed Project is consistent with the SKR HCP and IA. We request, a meeting to discuss the implementation of the SKR HCP. We appreciate the opportunity to comment on the MND and request that our meeting take place prior to recirculation or adoption of a CEQA document for the Project. We look forward to working with the RCHCA on SKR HCP. If you have any questions or comments regarding this letter, please contact Amanda Swaller of the Service at amanda_swaller@fws.gov or Eric Chan of the Department at Eric.Chan@wildlife.ca.gov.

Sincerely,

KARIN
CLEARY-ROSE
for
Rollie White
Assistant Field Supervisor
U.S. Fish and Wildlife Service

Digitally signed by KARIN
CLEARY-ROSE
Date: 2021.11.07 12:33:02
-08'00'

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...
for
Scott Wilson
Environmental Program Manager
California Department of Fish and Wildlife

cc:

Kurt Wilson, Executive Director, Western Riverside Council of Governments

kwilson@wrcog.us

Aaron Hake, Interim Regional Conservation Deputy Executive Director, Riverside County
Transportation Commission

ahake@RCTC.org

Literature Cited

- Dudek. 2007. Stephens' Kangaroo Rat Habitat Management and Monitoring Plan & Fire Management Plan for RCHCA Lands in the Lake Mathews and Steele Peak Reserves.
- Harkins, KM, Keinath D, Ben-David M. 2019. It's a trap: Optimizing detection of rare small mammals. PLoS ONE 14(3): e0213201. <https://doi.org/10.1371/journal.pone.0213201>
- Larson, C. L., S. E. Reed, A. M. Merenlender, and K. R. Crooks. 2019. A meta-analysis of recreation effects on vertebrate species richness and abundance. Conservation Science and Practice e93.
- Miller, A.B.; King, D.; Rowland, M.; Chapman, J.; Tomosy, M.; Liang, C.; Abelson, E.S.; Truex, R. 2020. Sustaining wildlife with recreation on public lands: a synthesis of research findings, management practices, and research needs. Gen. Tech. Rep. PNW-GTR-993. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 226 p
- Reed, S.E.; Merenlender, A.M. 2008. Quiet, nonconsumptive recreation reduces protected area effectiveness. Conservation Letters. 1(3): 146–154.
- Reed S.E., Merenlender AM. 2011. Effects of management of domestic dogs and recreation on carnivores in protected areas in northern California. Conserv Biol 25:504–513
- Spencer, W.D., DiPietro D., Romsos H., Shier D., and Chock R. 2021. Stephens' Kangaroo Rat Rangeland Management and Monitoring Plan. Unpublished report prepared by the Conservation Biology Institute for Bureau of Land Management and Riverside County Habitat Conservation Agency. March 2021.
- Thompson, B. 2015. Recreational Trails Reduce the Density of Ground-Dwelling Birds in Protected Areas. Environmental Management (2015) 55:1181–1190 DOI 10.1007/s00267-015-0458-4.