



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201

www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Dec 17 2021

December 17, 2021

STATE CLEARINGHOUSE

Mayuko Nakajima
City of Diamond Bar
21810 Copley Drive
Diamond Bar, CA 91765
MNakajima@diamondbarca.gov

**Subject: Crooked Creek Residential Subdivision, Mitigated Negative Declaration,
SCH #2021110140, City of Diamond Bar, Los Angeles County**

Dear Ms. Nakajima:

The California Department of Fish and Wildlife (CDFW) has reviewed an Initial Study/Mitigated Negative Declaration (MND) from the City of Diamond Bar (City; Lead Agency) for the Crooked Creek Residential Subdivision (Project). The Project is proposed by New Bridge Homes (Project Applicant). 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's 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 State 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, including 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.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, § 1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

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Project Description and Summary

Objective: The proposed Project site will be subdivided into nine lots that will each have a designated purpose. The Project proposes the development of seven single-family residences, five attached accessory dwelling units (ADUs), and associated infrastructure on seven designated lots. All residential lots will be separated using a six-foot-high concrete wall and varying wall heights for the sides of the yards. Project activities will also include the construction of retaining walls within the seven residential lots and installment of fences. The proposed development area will encompass approximately 2.5 acres, and 0.6 acres will be utilized for hillside grading and installment of terrace drains and retaining walls. In addition, another lot will be designated for the 43-foot-wide southward expansion of Crooked Creek Drive within the Project site. Alongside the road expansion, a 6.5-foot-wide sidewalk will be installed along the western side of Crooked Creek Drive. In the eastern portion of the Project site, the remaining lot will encompass 10.4 acres of retained undeveloped land. Water lines and sewer lines are proposed to be installed beneath the proposed southward expansion of Crooked Creek Drive.

The Project site will have three drainage areas. Drainage A will convey storm water in an east to west fashion that will lead to the existing Brea Canyon Channel located west of the Project site. Drainage B will convey storm water in a southeast to northwest fashion to a v-ditch located behind existing residential lots. Drainage C will convey storm water in an east to northwest fashion to an existing v-ditch located behind existing residential lots.

Prior to construction, clearing and grubbing of the Project site will include the removal of trees and vegetation. Clearing and grubbing of the proposed developed area will result in removal of 62 trees: 58 southern California black walnut trees and 4 coast live oaks. In addition, trees within the fueling modification zones B and C are subject to thinning and continual fuel modification activities. In total, the Project would include approximately 14,480 cubic yards of cut and 19,510 cubic yards of fill. Project grading and construction activities are anticipated to commence in 2022 and take place for a duration of 12 to 14 months.

Location: The Project is located on a 12.9-acre property at the terminus of Crooked Creek Road, in the City of Diamond Bar, Los Angeles County. The Project site is bounded by residential development to the north, State Route 57 to the west, Running Branch Road to the east, and vacant land to the south. The Assessor's Parcel Number (APN) for the Project is 8714-028-003.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City in adequately avoiding and/or mitigating the Project's impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

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Specific Comments

Comment #1: Inadequate disclosure of impacts on sensitive plant communities

Issue: CDFW is concerned that sensitive plant communities, including coast live oak (*Quercus agrifolia*) and southern California black walnut (*Juglans californica*), are not adequately identified and disclosed in the MND. The mapping and reporting of sensitive plant communities does not follow CDFW protocol.

Specific impacts: Table 4.4-1 in the MND reports the vegetation communities, and Table 4.4-2 provides the number of trees within the Project site. Based on Table 4.4-1 in the MND, the Project would impact the following sensitive plant communities within the 12.9-acre Project site.

- 4.8 acre of S4-ranked Coast Live Oak Woodland
- 0.4 acre of S3.2-ranked *Juglans californica* Stand
- 3.0 acres of Walnut woodland

Why impact would occur: The information regarding *Juglans californica* Stand in Table 4.4-1 does not correlate with Table 4.4-2. Table 4.4-2 reports 58 southern California black walnut trees are within the grading limit. However, Table 4.4-1 indicates there are 0 acres of vegetation impacts for the *Juglans californica* Stand and walnut woodland within the grading limit. These discrepancies in the data appears to have a misleading impact assessment that could potentially result in lower mitigation required. CDFW is concerned that the inaccurate disclosure of impacts could result in a net loss of sensitive plant communities.

In addition, the MND states that, "...coast live oak woodland would not be designated as a sensitive natural community because CDFW has designated nearly all coast live oak woodland associations with a conservation rank of S4..." This statement is inaccurate. Although, coast live oak does have a ranking of S4, there are various associations of coast live oak with a rarity ranking of S3. Some associations with a rarity ranking of S3 include *Quercus agrifolia* – *Umbellularia californica*, *Quercus agrifolia* - *Salvia mellifera*, and *Quercus agrifolia* – *Quercus berberidifolia* (CDFW 2021f). Given the fact that some coast live oak associations are rare, CDFW considers coast live oak woodlands a sensitive plant community (CDFW 2021d). The mapping and reporting data presented in the MND does not evaluate coast live oaks at an association level. Therefore, CDFW is unable to determine if rare coast live oak is on the Project site. If the coast live oak woodland on the Project site is rare, the MND as currently presented would not allow CDFW to adequately evaluate impacts on rare oak woodlands.

Evidence impact would be significant: CDFW considers plant communities, alliances, and associations with a State ranking of S1, S2, and S3 as sensitive and declining at the local and regional level. An S3 ranking indicates there are 21 to 100 viable occurrences of this community in existence in California, S2 has six to 20 occurrences, and S1 has fewer than six viable occurrences. Additional threat ranks of 0.1 and 0.2 indicate that a plant species is very threatened and threatened respectively (Sawyer et al. 2009). Moreover, oak trees and woodlands are protected by the Oak Woodlands Conservation Act (pursuant under Fish and Game Code sections 1360- 1372) and Public Resources Code section 21083.4 due to the historic and on-going loss of these resources.

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Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #1: CDFW recommends the City provide an updated and thorough floristic-based assessment of plant communities, following CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Populations and Sensitive Natural Communities](#) (CDFW 2018). CDFW also recommends that all sensitive natural communities should be mapped at the association level for project level maps subject to environmental review (CDFW 2021d). The CEQA document should adequately present the sensitive plant communities through data, mapping, and description of impacts.

Recommendation #2: Table 4.4-1 does not distinguish the difference between walnut woodland and *Juglans californica* Stand. The California Nature Plant Society recognizes walnut woodland as *Juglans californica* forest and woodland alliance not as separate plant communities (CNPS 2021). Based on the information presented in the MND and plant manual, CDFW recommends the MND be updated to reflect these two vegetation communities as the same.

Recommendation #3: CDFW also recommends the City update the Project's final CEQA document to provide updated information as to the Project impacts on the sensitive plant communities.

Comment #2: Inadequate mitigation for impacts on sensitive plant communities

Issue: Mitigation Measure BIO-4 as it is currently proposed does not provide sufficient mitigation for impacts to coast live oak trees and southern California black walnut trees. In addition, no mitigation was proposed for coast live oak trees and southern California black walnut trees that are indirectly impacted by fuel modification activities.

Specific impact: The proposed Project would result in direct removal of 4 coast live oaks and 58 southern California black walnut trees prior to grading activities. Project activities will also result in indirect impacts to coast live oak and southern California black walnut trees within fuel modification zones B and C.

Why impacts would occur: The Project would result in 62 coast live oak and southern California black walnut trees being removed from the Project site. Both tree species are considered sensitive plant communities with a rarity ranking of S3.2 for southern California black walnut and S4 (some associations S3) for coast live oak. These species are crucial to the ecosystem at the Project site, and removal of these trees would result in loss of habitat function. Alongside loss of habitat function, removing the trees may potentially result in permanent loss of habitat quality. Project activities would also contribute to temporal loss of habitat for wildlife species that rely on these native plant communities.

Fuel modification activities is a continual management activity that will perpetually impact the plant community through continuous thinning of lower limbs, removal of understory, and additional activities. Trees within fuel modification zone B and C would be impacted through the removal of lower limbs and continual fuel modification activities that would reduce its reproductive success. Removal of lower limbs to 36 coast live oak trees and 55 southern California black walnut trees will have an impact on available habitat and resources for wildlife in the area.

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Furthermore, the proposed mitigation replacement ratio in the MND is 3:1 for coast live oak and southern California black walnut trees impacted in the grading limit. The MND does not provide information that demonstrates why a replacement ratio of 3:1 ratio is sufficient for these sensitive plant communities. Although this mitigation ratio meets the minimum requirements per the City ordinance, it is unclear how the proposed replacement ratio is sufficient to offset Project impacts. With respect to this Project, the following major impacts may occur as a result of Project activities:

- 1) Impacts on coast live oak woodland that has a rarity rank of S4 with some S3 association. A rank of S3 is defined as a plant community that is “at moderate risk of extirpation in the jurisdiction due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors” (NatureServe 2021);
- 2) Impacts on southern California black walnut trees that has a rarity ranking of S3.2. This species is endemic to Southern California and is considered threatened by the additional rarity ranking of 0.2 (Sawyer et al. 2009);
- 3) Impacts to biodiversity given that southern California black walnut woodland is considered one of the rarest plant communities in southern California (Cal Poly Pomona 2021);
- 4) Impacts on sensitive plant communities associated with streams (e.g., Brea Canyon Channel);
- 5) Impacts on sensitive plant communities that could support sensitive or special status wildlife species [e.g., least Bell’s vireo (*Vireo bellii pusillus*)];
- 6) Impacts resulting in permanent loss of seed bank or propagules;
- 7) Impacts on sensitive plant communities that have low recruitment (Sawyer et al. 2009);
- 8) Impacts associated with temporal loss given the unknown nature of when compensatory mitigation would be implemented; and,
- 9) Impacts associated with temporal loss given the length of time the mitigation site will be restored to the same habitat quality, value, and function of the impact site.

Evidence impacts would be significant: Coast live oak and southern California black walnut trees serve several important ecological functions such as protecting soils from erosion and land sliding; regulating water flow in watersheds; and maintaining water quality in streams and rivers. Oak trees alone provide nesting and perching habitat for approximately 170 species of birds (Griffin and Muick 1990). Oak woodlands also have higher levels of biodiversity than any other terrestrial ecosystem in California (Block et al. 1990). Aside from providing nesting habitat, southern California black walnut trees provide acorns as a food source to a variety of wildlife species. In addition, the southern California black walnut is a species of local significance; a species of limited distribution; and a species that is moderately threatened in California with a rarity ranking of S3.2 (Sawyer et al. 2009). Southern California black walnut trees and California walnut groves meet the definition of endangered, rare, or threatened Species under CEQA (CEQA Guidelines, § 15380). Impacts on southern California black walnut trees and California walnut groves could be significant under CEQA [CEQA Guidelines, §§ 15002(g), 15065, 153820]. Furthermore, these impacted trees within in the grading limit and fuel modification zones are designated as protected trees per the [City of Diamond Bar Tree Preservation and Protection Ordinance \(City of Diamond Bar 2019\)](#). Currently, both species have a reduce range due to various factors including development and are often vulnerable to environmental effects of projects.

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Impacts to sensitive plant communities should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Inadequate or lack of avoidance, minimization, and mitigation measures for impacts to special status plant species, such as oak and walnut, will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative 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.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW recommends the City provide compensatory mitigation for impacts on individual trees and acres of coast live oak and southern California black walnut within the fueling modification zone and grading area. CDFW recommends the City update the MND where applicable to clearly state the Project would replant 339 southern California black walnut trees and 120 coast live oak trees. The City should also update the MND where applicable to clearly state the Project would replace impacted acreage at a minimum of 6.3 acres of coast live oak woodland and 0.3 acres of southern California black walnut woodland.

Mitigation Measure #2: CDFW recommends modifying Mitigation Measure BIO-4 to include the language underlined and remove language in strikethrough.

Mitigation Measure BIO-4: Prior to the issuance of a grading permit, a protected tree replacement plan shall be submitted to the City of Diamond Bar for approval. The plan shall demonstrate at least a 3:1 in-kind replacement ratio for individual trees and acres. ~~With the removal of~~ The total amount of protected trees within the proposed grading limits and fuel modification zones that includes a total of 40 coast live oak and 113 southern California black walnut. ~~4 coast live oaks and 58 southern California black walnuts, the~~ The Project applicant shall provide a replacement plan that includes at least 12 a minimum of 120 coast live oaks and 174 339 southern California black walnuts. The grading limit and fuel modification zones within the Project site include 2.1 acres of coast live oak woodland and 0.1 acre of southern California black walnut woodland. The Project applicant shall also include replacement for impacted acreage into the replacement plan. The total replacement for impacted acreage shall include at minimum 6.3 acres of coast live oak woodland and 0.3 acres of southern California black walnut woodland. The replacement trees and acreage shall include a combination of boxed trees within landscaped areas and seedlings and smaller-sized container trees in the undisturbed woodland areas of the Project site that is outside of the development area and fuel modification zones. If all of the replacement trees cannot be located on the Project site, some replacement trees shall be located off-site at a location approved by the City. The protected tree replacement plan shall also provide a methodology of soil preparation, planting, monitoring, survival percentages and maintenance as well as corrective measures if survival percentages do not meet the replacement ratio.

Recommendation: CDFW recommends the final CEQA document include a discussion of how the proposed 3:1 ratio reduces impacts to below a significant level. Specifically, the CEQA document should address how the mitigation ratio accounts for the following impacts:

- 1) Impacts on coast live oak woodland that has a rarity rank of S4 with some S3 association. A rank of S3 is defined as a plant community that is "at moderate risk of

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extirpation in the jurisdiction due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors” (NatureServe 2021);

- 2) Impacts on southern California black walnut trees that has a rarity ranking of S3.2. This species is endemic to Southern California and is considered threatened by the additional rarity ranking of 0.2 (Sawyer et al. 2009);
- 3) Impacts to biodiversity given that southern California black walnut woodland is considered one of the rarest plant communities in southern California (Cal Poly Pomona 2021);
- 4) Impacts on sensitive plant communities associated with streams (e.g., Brea Canyon Channel);
- 5) Impacts on sensitive plant communities that could support sensitive or special status wildlife species [e.g., least Bell’s vireo (*Vireo bellii pusillus*)];
- 6) Impacts resulting in permanent loss of seed bank or propagules;
- 7) Impacts on sensitive plant communities that have low recruitment (Sawyer et al. 2009);
- 8) Impacts associated with temporal loss given the unknown nature of when compensatory mitigation would be implemented; and,
- 9) Impacts associated with temporal loss given the length of time the mitigation site will be restored to the same habitat quality, value, and function of the impact site.

Comment #3: Mountain Lion (*Puma concolor*)

Issue: The Project site occurs within the range of mountain lion habitat. However, the MND does not analyze or address impacts to mountain lion habitat.

Specific impacts: The Project as proposed may impact the southern California mountain lion population by temporarily and permanently increasing human presence, traffic, and noise.

Why impacts would occur: Based on the mountain lion range dataset found in Biogeographic Information and Observation System (BIOS), mountain lion habitat falls within the Project site (CDFW 2021c). In addition, mountain lion presence near the Project site have been recorded on iNaturalist (iNaturalist 2016). Furthermore, the Project will increase human presence (e.g., new development, public trail access), traffic, and noise as well as potential artificial lighting during Project construction and over the life of the Project. Most factors affecting the ability of the southern California mountain lion populations to survive and reproduce are caused by humans (Yap et al. 2019). As California has continued to grow in human population and communities expand into wildland areas, there has been a commensurate increase in direct and indirect interaction between mountain lions and people (CDFW 2013). As a result, the need to relocate or humanely euthanize mountain lions (depredation kills) may increase for public safety. Mountain lions are exceptionally vulnerable to human disturbance (Lucas 2020). Areas of high human activity have lower occupancy of rare carnivores. Mountain lions tend to avoid roads and trails by the mere presence of those features, regardless of how much they are used (Lucas 2020). Increased traffic could cause vehicle strikes. Mountain lions avoid areas with low woody vegetation cover and artificial outdoor lighting (Beier 1995). As human population density increases, the probability of persistence of mountain lions decreases (Woodroffe 2000).

Evidence impact would be significant: The mountain lion is a specially protected mammal in the State (Fish and G. Code, § 4800). In addition, on April 21, 2020, the California Fish and Game Commission accepted a petition to list an evolutionarily significant unit (ESU) of mountain

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lion in southern and central coastal California as threatened under CESA (CDFW 2020b). As a CESA candidate species, the mountain lion in southern California is granted full protection of a threatened species under CESA. The Project may have significant impacts because no analysis was conducted regarding the direct and indirect, permanent or temporal losses, of habitat for mountain lion.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Due to potential habitat within the Project footprint, within one year prior to Project implementation that includes site preparation, equipment staging, and mobilization, a CDFW-approved biologist knowledgeable of mountain lion species ecology should survey areas that may provide habitat for mountain lion to determine presence/absence and potential for natal dens. Caves and other natural cavities, and thickets in brush and timber provide cover and are used for denning. Females may be in estrus at any time of the year, but in California, most births probably occur in spring. Surveys should be conducted when the species is most likely to be detected, during crepuscular periods at dawn and dusk (Pierce and Bleich 2003). Survey results including negative findings should be submitted to CDFW prior to initiation of Project activities. The survey report should include a map of potential denning sites. The survey report should include measures to avoid impacts to mountain lions that may be in the area as well as dens and cubs, if necessary.

Mitigation Measure #2: If potential habitat for natal-dens are identified, CDFW recommends fully avoiding potential impacts to mountain lions, especially during spring, to protect vulnerable cubs. Two weeks prior to Project implementation a CDFW-approved biologist should conduct a survey for mountain lion natal dens. The survey area should include the construction footprint and the area within 2,000 feet (or the limits of the property line) of the Project disturbance boundaries. CDFW should be notified within 24 hours upon location of a natal den. If an active natal den is located, during construction activities, all work should cease. No work should occur within a 2,000-foot buffer from a natal den. A qualified biologist should notify CDFW to determine the appropriate course of action. CDFW should also be consulted to determine an appropriate setback from the natal den that would not adversely affect the successful rearing of the cubs. No construction activities or human intrusion should occur within the established setback until mountain lion cubs have been successfully reared; the mountain lions have left the area; or as determined in consultation with CDFW.

Mitigation Measure #3: If “take” or adverse impacts to mountain lion cannot be avoided either during Project construction and over the life of the Project, Project proponent should consult CDFW and must acquire a CESA Incidental Take Permit (pursuant to Fish & Game Code, § 2080 *et seq.*).

Recommendation: CDFW recommends the City evaluate the mountain lion territory size and use of habitat within and surrounding the Project vicinity. The City should analyze the change (i.e., increase) in human presence and area of anthropogenic influence that may be in mountain lion habitat and how it may impact mountain lion behavior, reproductive viability, and overall survival success. CDFW recommends the City recirculate the MND with these analyses included.

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Comment #4: Least Bell's vireo (*Vireo bellii pusillus*)

Issue: CDFW is concerned that the Project could impact habitat for least bell's vireo, a federal Endangered Species Act (ESA)-listed species.

Specific impacts: Direct tree removal, thinning of trees, and construction activities will have an impact on potential breeding and foraging habitat for least Bell's vireo.

Why impacts would occur: According to the MND on page 58, least Bell's vireo have been documented within and associated with unlined portions of the Brea Canyon Channel directly southwest of the Project site. Although least Bell's vireo was not observed during field surveys, it is known that vireo utilize adjacent upland habitats that are near riparian habitat (USFWS 1998). Foraging adults have been documented to utilize upland habitat for food resources and potentially nesting habitat. Scientific literature has shown that least Bell's vireos have the capability to nest exclusively in non-riparian habitat (USFWS 1998).

Project activities could result in temporary or long-term loss of suitable nesting and foraging habitats. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy equipment may disrupt vireo mating calls or songs, which could impact reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009), and songbird abundance and density was significantly reduced in areas with high levels of noise (Bayne et al. 2008). Additionally, noise exceeding 70 dB(A) may affect feather and body growth of young birds (Kleist et al. 2018). In addition to construction activities, residential development and increased human presence in the Project site could contribute to vireo impact.

Evidence impact would be significant: Consistent with CEQA Guidelines section 15380, the status of vireo as an endangered species pursuant to the ESA (16 U.S.C. § 1531 *et seq.*) and CESA (Fish & G. Code, § 2050 *et seq.*) qualifies vireo as an endangered, rare, or threatened species under CEQA. Project impacts may result in substantial adverse effects, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Because suitable habitat for vireo is present, CDFW recommends the following be included as a mitigation measure in the MND: Prior to initiation of Project construction and activities within or adjacent to suitable nesting habitat during least Bell's vireo breeding season (March 15 – September 15), a CDFW-approved biologist with experience surveying for least Bell's vireo shall conduct surveys following USFWS established protocols to determine whether breeding and nesting least Bell's vireos are present within 500 feet of the Project site. If least Bell's vireo is present, no construction shall take place from March 15 through September 15.

Mitigation Measure #2: If "take" or adverse impacts to least Bell's vireo cannot be avoided either during Project construction and over the life of the Project, the Project proponent should consult CDFW and must acquire a CESA Incidental Take Permit (pursuant to Fish & Game Code, § 2080 *et seq.*).

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Comment #5: Tree Diseases, Pests, and Pathogens

Issue: Project activities will result in tree removal which may be host for invasive pests and diseases.

Specific Impacts: The Project may result in the spread of tree insect pests and diseases into areas not currently exposed to these stressors. This could result in expediting the loss of southern California black walnut and coast live oak trees within and adjacent to the Project site. Loss of trees may result in loss of foraging and perching habitat for mammals, birds, and raptors dependent on California walnut trees and oak woodland habitat within the retained area of the Project site.

Why impacts would occur: The Project may remove trees that could host diseases and pests. One such pathogen is sudden oak death. Sudden oak death has become the most common cause of mortality of oak (*Quercus* genus) and other native trees (Phytosphere 2015). Mortality rates of oak trees are greater than 50 percent in some areas impacted by sudden oak death (Phytosphere 2012). In addition, tree dieback can have cascading impacts on the habitat and ecosystem, particularly avian distribution and abundance (Monahan and Koenig 2006).

Diseases such as sudden oak death can spread via equipment and transport of infected material. These fragments can be spread to new locations if equipment and tools are not disinfected or cleaned before moving to the next work location. Infected material that is transported off site for disposal may expose trees and plant communities to pest and disease. This could result in expediting the loss of walnut trees, oak trees, and other native trees and plant communities within and adjacent to a Project area.

Evidence impacts would be significant: The Project may have a substantial adverse effect on any sensitive natural communities identified in local or regional plans, policies, and regulations or by the CDFW. The Project may result in a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW that are dependent on woodlands susceptible to insect and disease pathogens.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure: CDFW recommends that the subsequent CEQA document include a measure to mitigate the spread of invasive pests and diseases by implementing the following:

- 1) Prior to tree removal, a certified arborist should evaluate trees for infectious tree diseases including but not limited to: [sudden oak death](#) (*Phytophthora ramorum*), [thousand canker fungus](#) (*Geosmithia morbida*), [polyphagous shot hole borer](#) (*Euwallacea* spp.), and [goldspotted oak borer](#) (*Agrilus auroguttatus*) (TCD 2021; UCANR 2021; Phytosphere Research 2012; UCIPM 2013).
- 2) If a certified arborist determines trees are impacted by infectious pests or diseases, the certified arborist should prepare an Infectious Tree Disease Management Plan or develop a detailed, robust, enforceable, and feasible list of preventative measures. A plan/list should provide measures relevant for each tree pest or disease observed. To avoid the spread of infectious tree pests and diseases, infected trees should not be

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transported from the Project area without first being treated using best available management practices described Infectious Tree Disease Management Plan or list of preventative measures.

- 3) If possible, all tree material, especially infected tree material, should be left on site. The material could be chipped for use as ground cover or mulch. Pruning and power tools should be cleaned and disinfected before use to prevent introducing pathogens from known infested areas, and after use to prevent spread of pathogens to new areas.

Additional Recommendations

Nesting birds. CDFW recommends modifying Mitigation Measure BIO-3 to include the language underlined and remove language in strikethrough:

Mitigation Measure BIO-3: If removal of onsite trees and vegetation occurs during the non-nesting season (September 16 through December 31), no nesting survey or biological monitor are required.

If the removal of onsite trees and vegetation occurs during the nesting season (January 1 through September 15), the Project applicant shall provide the City documentation that a qualified biologist has been retained and would conduct a preconstruction nesting survey no more than 3 days prior to the start of removal activities. The preconstruction nesting surveys shall include areas within the proposed grading limits as well as areas that are within 500 feet of the proposed grading limits.

If an active nest is not found, no biological monitor is required. If active nests are detected, a minimum buffer (~~e.g., 300 feet for songbirds or 500 feet for raptors~~) around the nest shall be delineated and flagged, and no construction activity shall occur within the buffer area until a qualified biologist determines the nesting species have fledged and is no longer active or the nest has failed. A minimum buffer of 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active raptor nests, and 0.5 mile around active nests of a CESA or Endangered Species Act listed bird species shall be placed around an active nest. The buffer may be modified (i.e., increased or decreased) and/or other recommendations proposed (e.g., a temporary sound wall) as determined appropriate by the qualified biologist to minimize impacts. The qualified biologist shall monitor the removal of onsite trees and vegetation. Nest buffer distance will be based on species, specific location of the nest, the intensity of construction activities, existing disturbances unrelated to the proposed Project, and other factors as determined by a qualified biologist.

If construction activities using heavy equipment (i.e., graders, bulldozers, and excavators) continue through the nesting season, weekly nesting bird surveys shall be conducted. Each nesting bird survey shall include the work area and areas that are 500 feet from the work area.

Lake and Streambed Alteration Program. The proposed Project will convey storm water from Drainage Area A into the Brea Canyon channel. CDFW has concluded that the Project would result in the alteration of streams. As such, CDFW concurs with the Project's proposal to notify CDFW pursuant under Fish and Game Code, section 1600 *et seq.* The Project applicant (or "entity") must provide notification to CDFW pursuant to Fish and Game Code, section 1600 *et*

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seq. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration (LSA) Agreement with the applicant is required prior to conducting the proposed activities. Please visit CDFW's [Lake and Streambed Alteration Program](#) webpage to for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2020a). CDFW also recommends the LSA Notification should include a hydrology report to evaluate whether altering the streams may impact headwater streams where there is hydrologic connectivity. The hydrology report should also include a scour analysis to demonstrate that stream banks and streambed would not erode as a result of impacts within the Project site. Also, CDFW also requests a hydrological evaluation of the 200, 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions.

Data. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., California Natural Diversity Database (CNDDDB)] which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special status species detected by completing and submitting [CNDDDB Online Field Survey Form](#) (CDFW 2021e). The City should ensure that the Project applicant has submitted data properly, with all data fields applicable filled out, prior to finalizing/adopting the environmental document. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred. The Project applicant should provide CDFW with confirmation of data submittal.

Mitigation and Monitoring Reporting Plan. CDFW recommends updating the MND's proposed Biological Resources Mitigation Measures to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [(Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment A).

Filing Fees

The Project, as proposed, could 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 City of Diamond Bar 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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

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Conclusion

We appreciate the opportunity to comment on the Project to assist the City of Diamond Bar in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City of Diamond Bar has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines, § 15073(e)]. If you have any questions or comments regarding this letter, please contact Julisa Portugal, Environmental Scientist, at Julisa.Portugal@wildlife.ca.gov or (562) 330-7563.

Sincerely,
DocuSigned by:



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Erinn Wilson-Olgin
Environmental Program Manager I
South Coast Region

ec: CDFW

Erinn Wilson-Olgin, Los Alamitos – Erinn.Wilson-Olgin@wildlife.ca.gov
Victoria Tang, Los Alamitos – Victoria.Tang@wildlife.ca.gov
Ruby Kwan-Davis, Los Alamitos – Ruby.Kwan-Davis@wildlife.ca.gov
Felicia Silva, Los Alamitos – Felicia.Silva@wildlife.ca.gov
Frederic Rieman, Los Alamitos – Frederic.Rieman@wildlife.ca.gov
Cindy Hailey, San Diego – Cindy.Hailey@wildlife.ca.gov
CEQA Program Coordinator, Sacramento – CEQACOMMENTLETTERS@wildlife.ca.gov
State Clearinghouse, Office of Planning and Research – State.Clearinghouse@opr.ca.gov

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State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 South Coast Region
 3883 Ruffin Road
 San Diego, CA 92123
 (858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		Timing	Responsible Party
MM-BIO-1 – Plant Survey	The City shall provide an updated and thorough floristic-based assessment of plant communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Populations and Sensitive Natural Communities . All sensitive natural communities shall be mapped at the association level for project level maps subject to environmental review. The CEQA document shall adequately present the sensitive plant communities through data, mapping, and description of impacts.	Prior to finalizing CEQA document	City of Diamond Bar/ Project Applicant
MM-BIO-2 – Updated Mitigation	The City shall provide compensatory mitigation for impacts on individual trees and acres of coast live oak and southern California black walnut within the fueling modification zone and grading area. The City shall update the MND where applicable to clearly state the Project would replant 339 southern California black walnut trees and 120 coast live oak trees. The City shall also update the MND where applicable to clearly state the Project would replace impacted acreage at a minimum of 6.3 acres of coast live oak woodland and 0.3 acres of southern California black walnut woodland.	Prior to finalizing CEQA document	City of Diamond Bar/ Project Applicant
MM-BIO-3 – Mitigation Measure BIO-4 Replacement Plan	Mitigation Measure BIO-4: Prior to the issuance of a grading permit, a protected tree replacement plan shall be submitted to the City of Diamond Bar for approval. The plan shall demonstrate at least a 3:1 in-kind replacement ratio for individual trees and acres. The total amount of protected trees within the proposed grading limits and fuel modification zones includes 40 coast live oak and 113 southern California black	Prior to the City issuing construction related permits	City of Diamond Bar/ Project Applicant

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	<p>walnut. The Project applicant shall provide a replacement plan that includes a minimum of 120 coast live oaks and 339 southern California black walnuts. The grading limit and fuel modification zones within the Project site include 2.1 acres of coast live oak woodland and 0.1 acre of southern California black walnut woodland. The Project applicant shall also include replacement for impacted acreage into the replacement plan. The total replacement for impacted acreage shall include at minimum 6.3 acres of coast live oak woodland and 0.3 acres of southern California black walnut woodland. The replacement trees and acreage shall include a combination of boxed trees within landscaped areas and seedlings and smaller-sized container trees in the undisturbed woodland areas of the Project site that is outside of the development area and fuel modification zones. If all of the replacement trees cannot be located on the Project site, some replacement trees shall be located off-site at a location approved by the City. The protected tree replacement plan shall also provide a methodology of soil preparation, planting, monitoring, survival percentages and maintenance as well as corrective measures if survival percentages do not meet the replacement ratio.</p>		
<p>MM-BIO-4 – Mountain Lion Survey</p>	<p>Due to potential habitat within the Project footprint, within one year prior to Project implementation that includes site preparation, equipment staging, and mobilization, a CDFW-approved biologist knowledgeable of mountain lion species ecology shall survey areas that may provide habitat for mountain lion to determine presence/absence and potential for natal dens. Caves and other natural cavities, and thickets in brush and timber provide cover and are used for denning. Females may be in estrus at any time of the year, but in California, most births probably occur in spring. Surveys shall be conducted when the species is most likely to be detected, during crepuscular periods at dawn and dusk. Survey results including negative findings shall be submitted to CDFW prior to initiation of Project activities. The survey report shall include a</p>	<p>Prior to ground disturbing activities and vegetation removal</p>	<p>Project Applicant</p>

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	map of potential denning sites. The survey report shall include measures to avoid impacts to mountain lions that may be in the area as well as dens and cubs, if necessary.		
MM-BIO-5 – Mountain Lion Natal Den Avoidance	If potential habitat for natal-dens are identified, CDFW recommends fully avoiding potential impacts to mountain lions, especially during spring, to protect vulnerable cubs. Two weeks prior to Project implementation a CDFW-approved biologist shall conduct a survey for mountain lion natal dens. The survey area shall include the construction footprint and the area within 2,000 feet (or the limits of the property line) of the Project disturbance boundaries. CDFW should be notified within 24 hours upon location of a natal den. If an active natal den is located, during construction activities, all work should cease. No work should occur within a 2,000-foot buffer from a natal den. A qualified biologist shall notify CDFW to determine the appropriate course of action. CDFW shall also be consulted to determine an appropriate setback from the natal den that would not adversely affect the successful rearing of the cubs. No construction activities or human intrusion shall occur within the established setback until mountain lion cubs have been successfully reared; the mountain lions have left the area; or as determined in consultation with CDFW.	Prior to ground disturbing activities and vegetation removal	Project Applicant
MM-BIO-6 – California Endangered Species Act (CESA)- Mountain Lion	If “take” or adverse impacts to mountain lion cannot be avoided either during Project construction and over the life of the Project, Project proponent shall consult CDFW and must acquire a CESA Incidental Take Permit (pursuant to Fish & Game Code, § 2080 <i>et seq.</i>).	Prior to and during Project activities	Project Applicant
MM-BIO-7 – least Bell’s vireo Survey	Because suitable habitat for vireo is present, CDFW recommends the following be included as a mitigation measure in the MND: Prior to initiation of Project construction and activities within or adjacent to suitable nesting habitat during least Bell’s vireo breeding season (March 15 – September 15), a CDFW-approved biologist with experience surveying for least	Prior to ground disturbing activities and vegetation removal	Project Applicant

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	Bell's vireo shall conduct surveys following USFWS established protocols to determine whether breeding and nesting least Bell's vireos are present within 500 feet of the Project site. If least Bell's vireo is present, no construction shall take place from March 15 through September 15.		
MM-BIO-8 – California Endangered Species Act (CESA) – least Bell's vireo	If "take" or adverse impacts to least Bell's vireo cannot be avoided either during Project construction and over the life of the Project, the Project proponent should consult CDFW and must acquire a CESA Incidental Take Permit (pursuant to Fish & Game Code, § 2080 <i>et seq.</i>).	Prior to and during Project activities	Project Applicant
MM-BIO-9 – Tree Diseases, Pests, and Pathogens	<p>The subsequent CEQA document shall include a measure to mitigate the spread of invasive pests and diseases by implementing the following:</p> <ol style="list-style-type: none"> 1) Prior to tree removal, a certified arborist shall evaluate trees for infectious tree diseases including but not limited to: sudden oak death (<i>Phytophthora ramorum</i>), thousand canker fungus (<i>Geosmithia morbida</i>), polyphagous shot hole borer (<i>Euwallacea</i> spp.), and goldspotted oak borer (<i>Agrilus auroguttatus</i>). 2) If a certified arborist determines trees are impacted by infectious pests or diseases, the certified arborist shall prepare an Infectious Tree Disease Management Plan or develop a detailed, robust, enforceable, and feasible list of preventative measures. A plan/list shall provide measures relevant for each tree pest or disease observed. To avoid the spread of infectious tree pests and diseases, infected trees shall not be transported from the Project area without first being treated using best available management practices described Infectious Tree Disease Management Plan or list of preventative measures. 	Prior to finalizing CEQA document	City of Diamond Bar/Project Applicant

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	<p>3) If possible, all tree material, especially infected tree material, shall be left on site. The material could be chipped for use as ground cover or mulch. Pruning and power tools shall be cleaned and disinfected before use to prevent introducing pathogens from known infested areas, and after use to prevent spread of pathogens to new areas.</p>		
<p>MM-BIO-10 – Lake and Streambed Alteration Agreement</p>	<p>CDFW has concluded that the Project would result in the alteration of streams. As such, CDFW concurs with the Project’s proposal to notify CDFW pursuant under Fish and Game Code, section 1600 <i>et seq.</i> The Project applicant (or “entity”) shall provide notification to CDFW pursuant to Fish and Game Code, section 1600 <i>et seq.</i> Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration (LSA) Agreement with the applicant is required prior to conducting the proposed activities. Please visit CDFW’s Lake and Streambed Alteration Program webpage to for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal. The LSA Notification shall include a hydrology report to evaluate whether altering the streams may impact headwater streams where there is hydrologic connectivity. The hydrology report shall also include a scour analysis to demonstrate that stream banks and streambed would not erode as a result of impacts within the Project site. Also, CDFW also requests a hydrological evaluation of the 200, 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions.</p>	<p>Prior to ground disturbing activities and vegetation removal</p>	<p>Project Applicant</p>
<p>REC 1 – Sensitive Plant Communities</p>	<p>The California Nature Plant Society recognizes walnut woodland as <i>Juglans californica</i> forest and woodland alliance not as separate plant communities. Based on the information presented in the MND and plant manual, CDFW recommends</p>	<p>Prior to finalizing CEQA document</p>	<p>City of Diamond Bar/Project Applicant</p>

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	the MND be updated to reflect these two vegetation communities as the same.		
REC 2 – Update Final CEQA Document	CDFW recommends the City update the Project’s final CEQA document to provide updated information as to the Project impacts on the sensitive plant communities.	Prior to finalizing CEQA document	City of Diamond Bar/ Project Applicant
REC 3 – Impacts Discussion – Final CEQA Document	<p>CDFW recommends the final CEQA document include a discussion of how the proposed 3:1 ratio reduces impacts to below a significant level. Specifically, the CEQA document should address how the mitigation ratio accounts for the following impacts:</p> <ol style="list-style-type: none"> 1) Impacts on coast live oak woodland that has a rarity rank of S4 with some S3 association 2) Impacts on southern California black walnut trees that has a rarity ranking of S3.2. This species is endemic to Southern California and is considered threatened by the additional rarity ranking of 0.2 3) Impacts to biodiversity given that southern California black walnut woodland is considered one of the rarest plant communities in southern California 4) Impacts on sensitive plant communities associated with streams (e.g., Brea Canyon Channel) 5) Impacts on sensitive plant communities that could support sensitive or special status wildlife species [e.g., least Bell’s vireo (<i>Vireo bellii pusillus</i>)] 6) Impacts resulting in permanent loss of seed bank or propagules 7) Impacts on sensitive plant communities that have low recruitment 8) Impacts associated with temporal loss given the unknown nature of when compensatory mitigation would be implemented and 9) Impacts associated with temporal loss given the length 	Prior to finalizing CEQA document	City of Diamond Bar/ Project Applicant

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	of time the mitigation site will be restored to the same habitat quality, value, and function of the impact site		
REC 4 – Recirculation-Mountain Lion Information	CDFW recommends the City evaluate the mountain lion territory size and use of habitat within and surrounding the Project vicinity. The City should analyze the change (i.e., increase) in human presence and area of anthropogenic influence that may be in mountain lion habitat and how it may impact mountain lion behavior, reproductive viability, and overall survival success. CDFW recommends the City recirculate the MND with these analyses included.	Prior to finalizing CEQA document	City of Diamond Bar/ Project Applicant
REC 5 – Mitigation Measure BIO-3 Nesting Bird Survey	<p>Mitigation Measure BIO-3: If removal of onsite trees and vegetation occurs during the non-nesting season (September 16 through December 31), no nesting survey or biological monitor are required.</p> <p>If the removal of onsite trees and vegetation occurs during the nesting season (January 1 through September 15), the Project applicant shall provide the City documentation that a qualified biologist has been retained and would conduct a preconstruction nesting survey no more than 3 days prior to the start of removal activities. The preconstruction nesting surveys shall include areas within the proposed grading limits as well as areas that are within 500 feet of the proposed grading limits.</p> <p>If an active nest is not found, no biological monitor is required. If active nests are detected, a minimum buffer around the nest shall be delineated and flagged, and no construction activity shall occur within the buffer area until a qualified biologist determines the nesting species have fledged and is no longer active or the nest has failed. A minimum buffer of 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active raptor nests, and 0.5 mile around active nests of a CESA or Endangered Species Act listed bird species shall be placed around an active nest. The buffer may be</p>	Prior to and during Project activities	Project Applicant

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	<p>modified (i.e., increased or decreased) and/or other recommendations proposed (e.g., a temporary sound wall) as determined appropriate by the qualified biologist to minimize impacts. The qualified biologist shall monitor the removal of onsite trees and vegetation. Nest buffer distance will be based on species, specific location of the nest, the intensity of construction activities, existing disturbances unrelated to the proposed Project, and other factors as determined by a qualified biologist.</p> <p>If construction activities using heavy equipment (i.e., graders, bulldozers, and excavators) continue through the nesting season, weekly nesting bird surveys shall be conducted. Each nesting bird survey shall include the work area and areas that are 500 feet from the work area.</p>		
REC 6 – Data	<p>Please report any special status species detected by completing and submitting CNDDB Online Field Survey Form. The City should ensure that the Project Applicant has submitted the data properly, with all data fields applicable filled out, prior to finalizing/adopting the environmental document. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred. The Project Applicant should provide CDFW with confirmation of data submittal.</p>	Prior to finalizing CEQA document	City of Diamond Bar/ Project Applicant
REC 7 – MMRP	<p>The MND’s proposed Biological Resources Mitigation Measures should be updated and conditioned to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. The City is welcome to coordinate with CDFW to further review and refine the Project’s mitigation measures.</p>	Prior to finalizing CEQA document	City of Diamond Bar